



THE PROMISE OF FAIR MAPS

California's 2020 Local Redistricting Cycle:
Lessons Learned and Future Reforms

Nicolas Heidorn
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(PHOTO CREDIT: DOLORES HUERTA FOUNDATION.)

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The League of Women Voters of California is a non-partisan organization that works to empower voters and defend democracy. We seek to build a democracy in which every Californian has the right, the desire, the knowledge and the confidence to participate. We have a specific focus on closing the voter participation gap to ensure that people of color and young people have the access and tools to wield their power through voting, and building a more representative democracy that better serves all of California's diverse residents.

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I. EXECUTIVE SUMMARY

Redistricting, the process of redrawing election district boundaries every ten years to ensure districts have equal population, is crucial to democracy, including local democracy. How district lines are drawn can impact, for the next decade, which communities are represented in local government and have their interests recognized and prioritized in local decision-making. The goal of district elections, especially as contrasted with at-large elections, is to provide fair and effective representation for all of a jurisdiction's residents and diverse communities. However, there is a shameful legacy extending through today, across the nation but also in California at the local level, of the redistricting process being abused. Instead of a tool for empowerment, local redistricting too often has been used by incumbents — who nearly always control the drawing of their own districts — to entrench their power, advance one political party or faction over another, or stop or limit the ability of growing communities of color from electing their own representatives to office.

In 2019, the California Legislature passed and Governor Gavin Newsom signed into law AB 849 by Assemblymember Rob Bonta, known as the FAIR MAPS Act or FMA. The FMA was a landmark moment in the legal history of local redistricting: it remains the most significant and comprehensive overhaul of the city and county redistricting process in California history, and possibly of any state. The goal of the legislation, according to its author and sponsoring organizations, was to encourage broad public participation in the redistricting process, particularly from underrepresented and marginalized communities, and to promote “fair representation for all of California’s diverse communities.” The FMA made a number of changes to existing law to make the local redistricting process more transparent, participatory, and representative, including: adopting mandatory, ranked criteria that prioritize keeping neighborhoods and communities of interest whole; increasing the number of hearings before a map can be adopted and requiring outreach to encourage broad public participation; requiring advance notice of meetings and online posting of draft maps; and adjusting redistricting deadlines to provide more time for local redistricting.

A few years before the FMA, inspired by the California Citizens Redistricting Commission (CCRC), local advocates in many jurisdictions started demanding local independent redistricting commissions (IRCs), sometimes successfully, to fully remove redistricting from the hands of the local legislative body. The Legislature was broadly supportive of this trend, passing several laws to support the adoption of local IRCs, and establishing IRCs for Los Angeles and San Diego counties. The sudden expansion of local IRCs across the state has had as dramatic an impact as the FMA. Twenty-two cities and counties used independent redistricting commissions in the 2020 cycle, collectively accounting for 42% of the State’s population.

With the 2020 local redistricting cycle concluded, this report takes a step back to evaluate the effectiveness of the FMA and related IRC reforms at encouraging meaningful public participation in the process and promoting the adoption of maps that better reflect and empower a jurisdiction’s diverse communities. In particular, the report explores five key areas of the redistricting process — timing, transparency of the process, public participation in the process, line-drawing criteria, and the use of independent and advisory redistricting commissions — that significantly changed this cycle compared with prior cycles.

Methodology

The analysis in this report is principally drawn from the experience and field notes of the five statewide organizations sponsoring this report — ACLU of Southern California, ACLU of Northern California, Asian

Americans Advancing Justice - Asian Law Caucus, California Common Cause, and League of Women Voters of California — that collectively monitored or participated in over 100 local redistricting processes; stakeholder interviews with the staff of around two-dozen good government, voting rights, and civic organizations involved in local redistricting, as well as interviews with demographers and local government officials; and news media articles and government reports on the local redistricting process. The findings and recommendations in this report were informed and shaped by the stakeholder interviews but, unless stated otherwise, represent only the views of the report author and sponsoring organizations.

Key Findings

Overall, the FMA was broadly successful in promoting a more transparent and more participatory local redistricting process. To a lesser extent, it was successful in producing maps that better reflect the diverse communities residing in cities and counties across the state. However, the 2020 local redistricting cycle also revealed that improvements to the FMA are necessary to address ambiguities, loopholes, and deficiencies in the legislation that undermined the law’s important goals, and were often exploited to protect incumbents. Local IRCs, where structured to be politically independent of the legislative body, conducted by far the most transparent and participatory redistricting processes and were more likely than legislative bodies to draw maps that fairly reflected different communities within a jurisdiction.

Key findings of the report include:



1. TIMING: Late census data created a time crunch for counties and some cities.

Disruptions caused by the COVID-19 pandemic led to census data being released to the states more than four months behind schedule. The Legislature responded by moving back the date of the 2022 statewide primary from March to June and moving back by one month the local redistricting deadline for jurisdictions (all counties and some cities) that hold their elections with the primary. With these adjustments, there were about four months between the release of census data and the redistricting deadline for counties and cities with June primary elections, and about eight months for counties and cities with November elections. Most jurisdictions successfully met these deadlines and no jurisdiction had to have a court adopt its maps; however, the smaller window for map adoption compressed the time available for public input for jurisdictions with primary elections.



2. TRANSPARENCY: FMA reforms made for a far more transparent local redistricting process, although some jurisdictions failed to follow notice and publication requirements.

The FMA significantly improved local redistricting transparency for cities and counties. Jurisdictions had to maintain a redistricting webpage, post a calendar of meeting dates and information on how to participate in the redistricting process in English and sometimes other languages, and post draft maps online generally one week before their adoption, among other changes. Most jurisdictions met these requirements without problem; however, a number of jurisdictions failed to provide advance notice of meetings, were late setting up their redistricting website, or failed to post meeting recordings or summaries to the website until weeks or months later, all in violation of the FMA. Unlike the Brown Act, which provides rules for local open meetings, the FMA lacks a clear process and timeline for the public to notice and for jurisdictions to cure violations. This meant that correcting FMA procedural violations often took weeks in a process that lasted only a few months, or sometimes never happened. To assist local governments with compliance, the

Secretary of State was required to provide a number of templates, with translations, explaining the local redistricting process that local governments could post to their websites: this was a broadly-used resource. However, the templates had a number of minor errors that were never corrected.



3. PUBLIC PARTICIPATION: New redistricting rules and remote access policies significantly increased public and community engagement in the 2020 cycle.

The 2020 local redistricting cycle, overall, had more public participation than any prior local redistricting cycle. There were a number of reasons for this increase, including: the FMA's requirements that jurisdictions hold more public hearings than before and that jurisdictions do public outreach around redistricting; the public being more familiar with redistricting because of greater media attention to the topic and a wave of recent local government conversions from at-large to by-district elections in response to litigation threats under the California Voting Rights Act (CVRA); and, the more widespread use of local independent redistricting commissions, which encouraged turnout. In addition, because of the COVID-19 pandemic, many jurisdictions allowed the public to testify at redistricting public hearings remotely, which made it far more convenient for people to testify, especially those who might not be able to attend in-person meetings because of work or family obligations or limited mobility or access to transportation. Many jurisdictions took the FMA outreach requirements seriously and hosted multiple workshops and public hearings and had robust strategies for engaging with the media and public, and particularly with underrepresented and limited English proficient communities. However, other jurisdictions did not and held the bare minimum number of meetings required under the FMA and did little outreach other than post to their social media accounts. Free online public mapping tools were much more prevalent this cycle than before, which made it easier for the public to draw and submit draft community of interest or election district maps.



4. CRITERIA: Better redistricting criteria sometimes led to better maps, but incumbency-protection remains the primary obstacle to fairer community representation.

For city and county redistricting, the FMA replaced the prior discretionary redistricting criteria with ranked, mandatory criteria that jurisdictions had to follow when drawing districts and that prioritized keeping neighborhoods and communities whole. In some jurisdictions, the FMA criteria contributed to better outcomes: elected officials responded to community requests to be kept whole and drew districts that better reflected a jurisdiction's diversity. However, in numerous jurisdictions across the state, elected officials simply re-adopted their existing districts or enacted as few changes as possible to meet Constitutional equal population requirements, often ignoring heartfelt requests to reunite split communities. Incumbency protection was not a criterion under the FMA, yet some consultants and attorneys told incumbents they could consider it once the other FMA criteria were met. In practice, in many jurisdictions incumbency protection proved to be the overriding criterion for how maps were drawn. As a result, many neighborhoods and communities of interest, and especially underrepresented communities of color and marginalized communities, were cracked into multiple districts, diluting their voice and voting power for the next decade. The City of Los Angeles provided the most egregious example of this, where leaked audio of a conversation involving three councilmembers laid bare how redistricting could be used behind the scenes to entrench incumbents, punish enemies, and disempower marginalized communities for political reasons. Redistricting mapping abuses were often worse in school districts and special districts, which were not required to follow the FMA or any mandatory redistricting criteria under state law.



5. COMMISSIONS: Independent Redistricting Commissions adopted maps that better reflected the interests of communities over incumbents.

One of the big successes of the 2020 cycle was the widespread use of independent redistricting commissions. IRC-run redistricting overall was far more transparent, more participatory, and more responsive to community concerns than redistricting where incumbents drew their own lines. Most IRCs used carefully crafted commissioner qualifications (and disqualifying conflict of interest criteria) and an independent selection process to successfully insulate IRCs from the control or influence of the legislative body. As a result, IRCs often prioritized keeping neighborhoods and communities whole and often also prioritized empowering marginalized or underrepresented communities. However, instead of IRCs, many jurisdictions this cycle used advisory redistricting commissions (ARCs), which have the power to only recommend a map to the legislative body. ARCs had a far more mixed record than IRCs: ARC commissioners often ended up acting as proxies for the elected officials that appointed them, recommending maps that were likely no different than what the legislative body would have adopted on its own. Where ARCs proposed maps that better united communities of interests but also threatened the political status quo, their recommendations were often ignored.

Key Recommendations

While the FMA significantly improved city and county redistricting in California, this past cycle also revealed some significant shortcomings of the legislation that should be corrected prior to the 2030 cycle. This report provides 23 recommendations to reform local redistricting to create a more transparent, inclusive, and community-responsive process going forward, which are summarized in the table on page 6. Key recommendations include:

- **Prohibit jurisdictions from drawing lines to favor or discriminate against incumbents.** Incumbency protection is not a criterion of the FMA but, unlike for state and Congressional redistricting, it is not expressly prohibited. Time and again, legislative bodies used this loophole, and other claimed ambiguities in the FMA, to prioritize their own re-election interests over preserving the integrity of neighborhoods and communities of interest. Expressly banning incumbency protection would give community groups more advocacy and legal tools to prevent their communities from being split without justification and would prevent the recurrence of some of the more blatant abuses observed this cycle. Jurisdictions should also be required to produce a final report explaining how the lines they drew comply with the redistricting criteria.
- **Require independent redistricting commissions for larger jurisdictions and prohibit the direct appointment of commissioners by elected officials.** It is a conflict of interest for elected officials to draw their own election districts. Even with stronger and clearer criteria, incumbents will naturally be resistant to drawing community-reflective districts if it means hurting their own prospects at reelection. IRCs, whose members are not selected by incumbents and meet certain qualifications to ensure impartiality, were more transparent, more encouraging and receptive to public participation, and more likely to draw maps that kept communities whole than legislative bodies. IRCs also strengthened the public's trust in the fairness of the local redistricting process.
- **Increase the minimum number of FMA hearings and workshops from four to a minimum of six to ten, depending on the size of the jurisdiction.** While most cities and counties held far more than

the minimum four public hearings, by some estimates up to a third of jurisdictions held only the four hearings required by law. Because two of those four hearings could take place before draft maps were produced, and because a draft map could not be amended on the day of the hearing at which it was adopted, that effectively provided only one hearing at which public testimony could lead to draft map revisions in jurisdictions set on holding just the four hearings. Additional hearings would provide more opportunities for public input, deliberation, and most importantly refinement of draft maps. Adding hearings is especially important in larger jurisdictions where redistricting usually involves more communities and is more complex.

- **Require that jurisdictions provide in-person and remote options for providing live testimony at public hearings.** A silver lining of the pandemic was that, in many jurisdictions, the public was able to testify at redistricting hearings remotely, either through calling-in or by using internet platforms, like Zoom. Remote testimony was extremely popular in the jurisdictions that offered it, often far exceeding in-person testimony, contributing to higher participation and easing some of the travel, family, and work burdens that might otherwise prevent community members from engaging in the process. To ensure a more participatory and inclusive process, remote along with in-person testimony options should be required in future redistricting cycles.

- **Extend the FMA to apply to all local governments.** Unlike cities and counties which are subject to the FMA, there are no mandatory criteria, public outreach requirements, or specific transparency requirements for school district, community college district, county board of education, or special district redistricting. Redistricting in these jurisdictions is less open and participatory as a result, and in many jurisdictions maps were adopted expressly to protect incumbents, splitting communities, neighborhoods, and cities. The baseline best practices implemented through the FMA should be extended to all local governments.

SUMMARY OF ALL RECOMMENDATIONS



1. TIMING

Recommendation 1.1: Revisit the 2030 redistricting cycle timeline in 2028 or 2029.

Recommendation 1.2: Conform the map-adoption deadline for all local redistricting.

Recommendation 1.3: Change the redistricting deadline to land on a Monday, not a Sunday.



2. TRANSPARENCY

Recommendation 2.1: Require consultation with external stakeholders and a public review period before the SOS finalizes its local redistricting templates.

Recommendation 2.2: Require that redistricting webpages be created at least two weeks before the first public hearing.

Recommendation 2.3: Shorten the time period for publicly posting meeting video/minutes of hearings to one week, or before the next hearing.

Recommendation 2.4: Require public posting of all non-verbal public comments received by the jurisdiction, including written comments or draft community of interest maps.

Recommendation 2.5: Create a clear legal process for noticing and curing FMA process violations.



3. PUBLIC PARTICIPATION

Recommendation 3.1: Increase the minimum number of FMA hearings and workshops from four to a minimum of six to ten, depending on the size of the jurisdiction.

Recommendation 3.2: Require that jurisdictions provide in-person and remote options for providing live testimony at public hearings.

Recommendation 3.3: Require that jurisdictions adopt a redistricting outreach and education plan after receiving community input.

Recommendation 3.4: Fund community-based organizations to engage underrepresented communities in the local redistricting process.

Recommendation 3.5: Create a statewide public mapping tool for local redistricting.



4. CRITERIA

Recommendation 4.1: Prohibit jurisdictions, including charter cities, from drawing lines to favor or discriminate against incumbents.

Recommendation 4.2: Clarify that the ranked criteria must be followed to the “maximum” extent practicable and that unranked criteria cannot be given precedence over ranked criteria.

Recommendation 4.3: Require that jurisdictions adopt a report indicating how their maps comply with the redistricting criteria, including providing a justification whenever a neighborhood or community of interest is split.

Recommendation 4.4: Require that counties and cities to do a *Gingles* prong 1 analysis and, if a racially-polarized voting analysis is conducted, require that a summary of that analysis be published.

Recommendation 4.5: Extend the FMA to apply to all local governments.



5. COMMISSIONS

Recommendation 5.1. Require independent redistricting commissions for larger jurisdictions and prohibit the direct appointment of commissioners by elected officials.

Recommendation 5.2. Jurisdictions with IRCs should make careful plans, and invest the necessary resources, to recruit a large and diverse applicant pool.

Recommendation 5.3. Require the State Auditor to inform applicants that are not selected for the State Redistricting Commission of opportunities to serve on a local redistricting commission.

Recommendation 5.4. Require stipends for independent redistricting commission commissioners.

Recommendation 5.5. Prohibit the political appointment of ARC commissioners.

II. BACKGROUND

The FAIR MAPS Act: New Standards for City and County Redistricting

In 2018, a coalition of good government and civil rights organizations convened to reconsider California's local redistricting process in light of the abuses seen in the 2010 cycle and some subsequent districtings¹ and to propose changes to strengthen the process in advance of the 2020 cycle. The coalition came to consensus on a series of reforms to overhaul the process, including more public hearings, greater transparency, stricter redistricting criteria, and more flexible redistricting deadlines. These reforms culminated in the introduction of Assembly Bill 849 in 2019 by Assemblymember Rob Bonta.² The Fair And Inclusive Redistricting for Municipalities And Political Subdivisions Act (“FAIR MAPS Act”, or “FMA”), as the bill was officially titled, was sponsored by Asian Americans Advancing Justice – California, California Common Cause, and the League of Women Voters of California, and supported by over a dozen other organizations, including ACLU of California, Advancement Project California (now Catalyst California), Council of American Islamic Relations - California, Dolores Huerta Foundation, and MALDEF.³

The FMA aimed to fundamentally transform local redistricting from being primarily an insider process focused on promoting the electoral interests of incumbents into a more open and community-informed process, focused on fairly representing neighborhoods and communities of interest, and especially under-represented communities. The bill's legislative history emphasized how important the local redistricting process was to promoting fair local representation. “Redistricting is of crucial importance to local democracy,” explained Assemblymember Bonta as the bill moved through the legislative process, because how “county supervisor or city council election districts are drawn can help determine, for the next decade, whether or not a community will be represented at their closest levels of government.”⁴ The author cited a 2016 study finding that, although 40% of the state's residents were Latino, only 10% of county supervisors and 15% of city councilmembers were.⁵ With the 2020 cycle rapidly approaching, the Assemblymember warned that:

“[u]nrepresentative boards will be redrawing election districts with no criteria to ensure fair representation and with few requirements to engage their residents and communities, and especially non-English-speaking communities, in the process. It is therefore critical that the 2021 local redistricting cycle, and subsequent redistrictings, promote – and not impede – the goal of fair representation for all of California's diverse communities.”⁶

1 See, e.g., Nicolas Heidorn, “California Local Redistricting Commissions: Landscape, Considerations and Best Practices,” California Local Redistricting Project (Updated 2017), www.localredistricting.org/research (“Boxes of newspaper clippings describe majorities on local governing boards abusing the redistricting process to: protect incumbents; defeat incumbents in the political minority; deter challengers; promote successors; disenfranchise growing minority communities; reward political loyalty; and exact political retribution.”).

2 AB 849 (Bonta), Chapter 557, Statutes of 2019, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB849.

3 Senate Rules Committee, Floor Analysis of AB 849 (Bonta) (Sep. 5, 2019), leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB849.

4 Senate Committee on Governance and Finance, Analysis of AB 849 (Bonta) (Jul. 8, 2019), leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB849#.

5 *Ibid.* See also California Legislative Latino Caucus and The Leadership California Institute, “The Politics of Prosperity: A Look into California's Latino Representation Challenge” (2016), gallery.mailchimp.com/b169e07cd01d4a10c2c4670ec/files/315d484b-82d3-4b9a-8e49-deb33e37c499/Politics_of_Prosperty_FINAL_report.pdf.

6 Senate Committee on Governance and Finance, Analysis of AB 849 (Bonta) (Jul. 8, 2019).

The FMA sought to strengthen redistricting laws that apply to cities and counties by: 1) increasing opportunities for public engagement, 2) requiring greater process and map-adoption transparency, and, 3) changing district line-drawing criteria. As originally proposed, the FMA would have applied to all levels of local government, including counties, cities, school districts, and special districts. However, as the bill went through the legislative process, it was narrowed to apply only to city and county redistricting.



*Assemblymember Rob Bonta, Presenting the FAIR MAPS Act
Assembly Elections and Redistricting Committee, Wednesday, April 10th, 2019*

FMA public engagement requirements

Prior to the passage of the FMA, there were few local redistricting-specific requirements to engage the public. Existing law at the time only required cities and counties to hold one public hearing before adopting district maps.⁷ This remains the only requirement for special districts; schools and community college districts are not explicitly required to conduct a public hearing before adopting maps.⁸ The Ralph M. Brown Act, California’s general local government open meetings law, provides some baseline rights for public participation in local decision making, such as usually requiring that items be voted on at a public meeting with an opportunity for public comment.⁹ However, as one pre-FMA report on California’s local redistricting process noted, there was “no requirement that the board do additional community outreach to solicit input on the new maps. The upshot is that community groups and members of the public are sometimes unaware that redistricting is even taking place.”¹⁰

⁷ See former California Elections Code Sections 21507 (counties), 21607 (general law cities), and 21621 (charter cities).

⁸ See California Elections Code Section 22001 (special districts) and California Education Code Section 5019.5 (schools and community college districts).

⁹ See California Government Code Sections 54950 *et seq.*

¹⁰ Nicolas Heidorn, “California Local Redistricting Commissions: Landscape, Considerations and Best Practices,” California Local Redistricting Project (Updated 2017).

These minimal public hearing requirements for city and county *redistricting* could be contrasted with the more involved requirements that were (and remain) in place for jurisdictions adopting district lines for the first time, i.e., when *districting*. For an initial districting, state law requires jurisdictions to hold four public hearings before adopting a map: two before the jurisdiction proposes draft maps, and two after the first draft map is released. In addition, the jurisdiction “may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.”¹¹

Under the FMA, cities and counties engaged in redistricting are now required to hold the same number of hearings (four) as a jurisdiction that is first adopting districts. Specifically, cities and counties must hold at least one hearing before a draft map is drawn and two after the first map is drawn.¹² The fourth hearing can be held either before or after draft maps are drawn. The FMA also includes a number of other requirements to make redistricting hearings more accessible. To broaden who is able to attend public hearings, the FMA requires that public hearings be held in locations that are accessible to persons with disabilities and, to accommodate working residents, at least one hearing must be held on a weekend or after 6pm on a weekday. If a jurisdiction consolidates its redistricting hearing with a regular city council or board of supervisors meeting, the redistricting hearing is required to start at a set time (although any prior agenda item may be completed before the hearing begins). In addition, so that meeting attendance is not a precondition to participation, jurisdictions are required to accept written or electronic submissions of public testimony or draft maps.

The FMA also mandates that cities and counties take steps to encourage public participation in the redistricting process, including from residents in “underrepresented communities and non-English speaking communities.”¹³ At minimum, this must include a “good faith” effort to provide redistricting information to local media, including media organizations serving communities with limited English proficiency, as well as local good government, civic, civil rights, and community organizations. Jurisdictions with higher proportions of residents who speak a language other than English are also required, upon request, to provide live translation of public hearings, as well as to translate and post certain redistricting information on their websites.

11 California Elections Code Section 10010(a).

12 California Elections Code Sections 21507.1 (counties), 21607.1 (general law cities), and 21627.1 (charter cities). Note: FMA requirements for counties are codified from Elections Code Sections 21500 to 21509, for general law cities from Sections 21600 to 21609, and for charter cities from Sections 21620 to 21630.

13 California Elections Code Sections 21508, 21608, and 21628.

Public Participation Requirements for City and County Districting and Redistricting Pre- and Post-FAIR MAPS Act

	Districting	Redistricting - <i>Prior Requirements</i>	Redistricting - FAIR MAPS Act
Public Hearings	Minimum of 4: <ul style="list-style-type: none"> ▪ 2 <i>before</i> drawing draft maps ▪ 2 <i>after</i> drawing draft maps 	Minimum of 1 prior to the hearing where maps are adopted	Minimum of 4: <ul style="list-style-type: none"> ▪ 1 <i>before</i> drawing draft maps ▪ 2 <i>after</i> drawing draft maps ▪ 1 either before or after drawing draft maps <i>Note: at least 1 hearing held on a weekend or after 6pm on a weekday</i>
Outreach & Public Engagement	“May” do outreach to public and non-English-speaking communities	None	Requires jurisdiction to: <ul style="list-style-type: none"> ▪ Encourage public participation, including in underrepresented and non-English speaking communities ▪ Provide information to local media and good government, civic engagement, civil rights, and community groups ▪ Offer live translation of public hearings in some jurisdictions ▪ Allow electronic submission of draft maps and written public comment

FMA transparency requirements

The FMA, for the first time, imposed additional transparency requirements on city and county redistricting processes beyond what is required by the Brown Act.¹⁴ Redistricting meetings must generally be noticed five days in advance, instead of three days in advance under the Brown Act, and a jurisdiction is required to maintain a calendar of upcoming public hearings and workshops. A jurisdiction must either record their public hearings and workshops or prepare a written summary of each public comment received and board deliberation. Maps must be posted online for at least seven days before they can be adopted, unless there are fewer than 28 days remaining until the redistricting deadline, in which case a map must be posted for at least 3 days before adoption. This is fairly similar to the requirements for initial districting, where the first version of a draft map must be published for seven days before it can be considered at a hearing and a draft map must be available to the public for seven days before it can be adopted.¹⁵ Finally, the FMA also requires jurisdictions to create a dedicated webpage on redistricting, which must include information on redistricting, the hearing calendar, meeting agendas, meeting recordings or summaries, all draft maps considered by the council or board, and the final adopted maps. The redistricting webpage must be maintained for 10 years, meaning this information must remain up in essence until the next district lines are adopted.

¹⁴ California Elections Code Sections 21508, 21608, and 21628.

¹⁵ California Elections Code Section 10010(a). This is also similar to the draft map posting requirements for the California Citizens Redistricting Commission. See California Government Code Section 8253(a)(7).

The FMA's transparency requirements for cities and counties stand in stark contrast to the transparency requirements for other local governments (i.e. special districts, school districts, etc.), which have no additional redistricting transparency obligations.

FMA redistricting criteria

One of the FMA's most significant changes was to eliminate the mostly discretionary "considerations" for city and county redistricting and replace them with new, mandatory criteria. Prior to the FMA, there were only two mandatory criteria for city and county redistricting: districts needed to be "as nearly equal in population as may be" and needed to comply with the federal Voting Rights Act (VRA), which prohibits drawing districts that disenfranchise racial and language minority communities in certain circumstances.¹⁶ Beyond these federal requirements, state law also provided that, in establishing districts, local governments "may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests" in the jurisdiction.¹⁷

To advocates, these considerations suffered from three fatal flaws: they were discretionary, ambiguous, and unranked. The use of the terms "may consider" rather than "shall follow" implied that local jurisdictions were not required to follow any particular factor. Moreover, none of the listed factors were defined or included a directive for how they should be applied. For example, it was unclear what the "integrity" factor referred to (integrity of what?), nor was it clear how separate factors, like topography and geography, or cohesiveness and community of interests, differed from each other. Once a consideration was implicated — for instance, if a jurisdiction had geographically distinct regions or communities of interest — the statute also failed to provide a line-drawing goal: was the goal to create similar (homogenous) or dissimilar (heterogenous) districts? To advocates, the goal of districting is to empower diverse communities that, in at-large elections, might never win representation; however, the prior law did not make that clear, and some jurisdictions purposefully adopted districts that split neighborhoods and communities to make each district a "microcosm" of the jurisdiction as a whole.¹⁸ Finally, redistricting criteria often conflict and, with no clear ranking of criteria, the prior statute offered no clear way of resolving this conflict, or left it entirely in the discretion of the line-drawer. Communities of interest, for example, grow organically and may sprawl or have an odd shape; in such cases, should a line-drawer prioritize the traditional redistricting criterion of drawing compact districts or another traditional criterion of keeping communities whole?

The FMA repealed the prior discretionary considerations for city and county redistricting and replaced them with mandatory requirements and ranked criteria, modeled after the criteria for state and Congressional redistricting in the California Constitution. According to FMA sponsor California Common Cause, the goal of the new FMA criteria was to reorient the line-drawing process to "put[] neighborhoods and communities first."¹⁹ Under the new FMA rules, after certain basic redistricting requirements are met, like drawing contiguous and equipopulous districts that comply with federal law, the highest-ranked criterion for local redistricting is to minimize the division of neighborhoods and communities of interest.

16 See former California Elections Code Sections 21500, 21601, and 21620.

17 See former California Elections Code Sections 21500, 21601, and 21620.

18 Dana Guzzetti, "Residents call for independent redistricting at Council meeting," *Martinez News-Gazette* (Sep. 8, 2019), martinezgazette.com/residents-call-for-independent-redistricting-at-council-meeting/.

19 Senate Elections and Constitutional Amendments Committee, Analysis of AB 849 (Bonta) (Jun. 13, 2019), [leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB849](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB849).

The FMA begins by referencing four existing legal requirements that apply to all local redistricting in California: cities and counties are required to follow “the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965” and must draw districts that are “substantially equal in population as required by the United States Constitution.”²⁰ The FMA specifies that equal population must be based on “total population of residents” as determined “by the most recent federal decennial census,” and requires, to the extent the data is available, that incarcerated persons be counted at their last known residence, instead of their place of incarceration. This more specific definition of population was meant both to prevent prison gerrymandering — where a jurisdiction inflates the population of a district by counting the incarcerated population²¹ — and to preempt any local attempt to redefine redistricting to be based on citizen or registered voter population instead of resident population, a proposal some Republican strategists and the Trump Administration appeared to be promoting for congressional apportionment and redistricting at the time.²²

The FMA next lists four (cities) to five (counties) ranked redistricting criteria that local jurisdictions must comply with “to the extent practicable.”²³ The FMA criteria for local redistricting are very similar to the state legislative and Congressional redistricting criteria, but with some notable differences.²⁴ The local criteria, in ranked order, are:

- **Contiguity:** Districts must be geographically contiguous. This local criterion is the same as the state criterion, except contiguity is further defined to exclude point-contiguity and water contiguity.
- **Neighborhoods and Communities of Interest:** The geographic integrity of neighborhoods and local communities of interest (COIs) must be respected. COI is defined as a population sharing “common social or economic interests that should be included within a single district for purposes of its effective and fair representation” and excludes relationships with political parties, incumbents, or candidates. The state COI definition is the same as the local definition, except that a state COI must be a “contiguous” population that shares both common “social and economic interests.”
- **Cities and Census Designated Places:** For county redistricting only, the geographic integrity of a city or census designated place, i.e. an unincorporated area like a town, must be respected. Both the state and county criteria require that cities be kept intact, but the local criteria ranks preserving COIs and neighborhoods above cities, whereas the state criteria ranks these criteria equivalently.
- **Easily Identifiable Boundaries:** Districts must be bounded by natural and artificial barriers. This local criterion has no state equivalent.
- **Compactness:** Districts must be drawn to encourage geographical compactness. This local criterion is the same as the state criterion.

20 California Elections Code Sections 21500(a)-(b), 21601(a)-(b), and 21621(a)-(b).

21 Garrett Fisher, Taylor King, and Gabriella Limón, “Prison Gerrymandering Undermines Our Democracy,” Brennan Center (Oct. 22, 2021), <https://www.brennancenter.org/our-work/research-reports/prison-gerrymandering-undermines-our-democracy>.

22 See Jowei Chen and Nicholas O. Stephanopoulos, “Democracy’s Denominator,” *California Law Review* (Jun. 2021), <https://californialawreview.org/print/democracys-denominator/>. See also Michael Wines, “Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question,” *New York Times* (May 30, 2019), <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html> (Republican strategist argued for redistricting based on citizen population to decrease Democratic and Latino representation).

23 California Elections Code Sections 21500(c), 21601(c), and 21621(c).

24 Compare with California Constitution, Article XXI, Section 2.

Finally, after the ranked criteria, the FMA prohibits drawing district lines “for the purpose of favoring or discriminating against a political party,” which is identical to language found in the State Constitution for state legislative and Congressional redistricting, except that the latter also expressly prohibits discrimination for or against incumbents and political candidates for state and Congressional office.²⁵

A parallel movement: the ascendance of Independent Redistricting Commissions (IRCs)

The FMA sought to significantly revise the process of city and county redistricting, but did not address *who* is responsible for redistricting: under the status quo, which the FMA did not change, city councils and county boards of supervisors are by default empowered to adopt their own election districts. However, since the last redistricting cycle, there has been a dramatic increase in the number of cities and counties that have turned over the redistricting process to an independent redistricting commission, where the commission is assigned the power, independent of the legislative body, to adopt new districts.²⁶

In the 2010 redistricting cycle, only two cities, San Diego and Modesto, and one city and county, San Francisco, redistricted using an IRC. Of these, only San Diego’s commission was *politically* independent from the city council: its 9 members were appointed by a panel of retired judges.²⁷ San Francisco’s commission, by contrast, was mostly composed of political appointees: of its nine members, three were appointed by the Mayor, three by the Board of Supervisors, and three by the City’s Elections Commission.²⁸ Similarly, Modesto’s commission was appointed by the City Council, but “strong consideration” had to be given to appointing certain types of commissioners, like a retired judge, a member of a taxpayer’s association, a member of a civil rights organization, and other categories.²⁹

By the 2020 cycle, the number of jurisdictions with either a politically-independent or non-politically-independent IRC jumped from three to 22, including jurisdictions like Los Angeles County, San Diego County, Oakland, Sacramento, and Long Beach.³⁰ Just over 16.5 million Californians reside in either a city or county that used an IRC in the 2020 redistricting cycle, accounting for about 42% of the state’s population. Overwhelmingly, these new IRCs are much more politically independent than their precursors. For 18 of the 22 IRCs, commissioners are not directly appointed by elected officials. Most local IRCs also require that commissioners meet strict eligibility qualifications, similar to the qualifications required of State Commission-

25 California Elections Code Sections 21500(d), 21601(d), and 21621(d).

26 State law distinguished between “independent” and “hybrid” redistricting commissions where, in the latter, the commission proposes two or more maps to the legislative body and the legislative body must select one without change, except as specified. See California Elections Code Section 23000. For the purposes of this report, hybrid commissions are treated as independent commissions, since it is the commission, and not the legislative body, that is deciding on the placement of district lines.

27 San Diego City Charter, Article II, Section 5.

28 San Francisco Charter, Article XIII, Section 13.110.

29 Modesto City Charter, Article V, Section 501.

30 California Local Redistricting Project, “Ordinance Database,” www.localredistricting.org/ordinance (accessed August 2022). This number includes five “hybrid” redistricting commissions, where the legislative body has some say as to the lines. However, the CLRPP’s classification of a hybrid commission is broader than state law and includes a commission which provides a recommendation to the legislative body that the body may adopt outright or return the map with comments to the commission, which the commission can then revise to be responsive to those comments or adopt unchanged. Because the legislative body has no power to override the commission’s preferred map, these commissions would be classified as independent commissions under state law.

ers, including prohibitions on an IRC commissioner being or having been a local lobbyist, major campaign donor, candidate, elected official, or a family member or staffer to an elected official.³¹

Cities and Counties with Independent Redistricting Commissions in the 2020 Redistricting Cycle

Cities (18)		Counties (4)
Berkeley	Modesto*	Los Angeles
Brentwood†	Oakland	San Diego
Carlsbad	Pomona*	San Francisco* (City & County)
Chula Vista	Roseville	Santa Barbara
Escondido	Sacramento	
Lincoln	San Diego	
Long Beach	Santa Barbara	
Martinez	Santa Clara	
Menlo Park	Sunnyvale*†	

* Politically-appointed commission.

† Hybrid commission, where the commission proposes two or more maps to the city council, one of which the council must adopt without change.

The sudden growth of IRCs in California in part reflects the success of arguments in favor of the State California Citizens Redistricting Commission (CCRC) filtering down to the local level. Between 2008 and 2012, Californians voted three times in favor of independent state redistricting, each time with growing levels of support:

- Proposition 11 (2008), creating the CCRC to redraw state legislative districts, was passed with 51% in favor;
- Proposition 20 (2010), which extended the CCRC’s mandate to include Congressional redistricting, received 61% of the vote; and
- Proposition 40 (2012), which would have repealed the CCRC’s State Senate districts, was defeated with 72% voting against.

After contentious local redistrictings in the 2010 cycle, some advocates and elected officials turned to the state CCRC as a model to fix the local process. Many of the newly adopted local IRCs, including in Chula Vista, Oakland, Berkeley, Sacramento, and Long Beach, were consciously adapted from the State Commission, even employing a similar method of randomly selecting a subset of commissioners. Local proponents also made the same policy arguments for independent redistricting as had been made for the CCRC, in many cases borrowing some of the same framing and phrases.³² For example, in the ballot arguments for Sacramento’s IRC, proponents echoed the argument for Proposition 11 in writing that it “is a conflict of interest

31 For IRCs established by all local jurisdictions except charter cities, state law prohibits the direct political appointment of IRC commissioners and requires that commissioners meet eligibility criteria to promote commissioners’ political independence. See California Elections Code Sections 23000 *et seq.* Charter cities are not required to follow these restrictions, but most do. See Nicolas Heidorn, “California Local Redistricting Commissions: Landscape, Considerations and Best Practices,” California Local Redistricting Project (2017 Updated).

32 Ian O’Grady and Nicolas Heidorn, “The Winning Argument: Messaging in California State and Local Redistricting Reform Campaigns,” California Local Redistricting Project (Feb. 2018), www.localredistricting.org/research.

for politicians to draw the boundaries of city council districts they run in. Voters should be choosing their elected officials; elected officials should not be choosing their voters!”³³

This local trend was also assisted, and furthered, by new state legislation supportive of independent local redistricting, which received the endorsement of many of the same organizations supporting the FMA. In 2016, the Legislature passed SB 1108 (Allen), which authorized cities and counties to establish independent redistricting commissions.³⁴ Two years later, the Legislature passed SB 1018 (Allen, 2018), authorizing all local governments to establish IRCs.³⁵ At the same time, the Legislature passed two bills — SB 958 (Lara, 2016) and AB 801 (Weber, 2017) — mandating IRCs for Los Angeles and San Diego counties, respectively.³⁶ Another bill, SB 139 (Allen, 2019) would have required all counties with a population over 400,000 residents to establish an IRC; however, Governor Newsom vetoed the bill, explaining that, while IRCs “can be an important tool in preventing gerrymandering, local jurisdictions are already authorized to establish” them.³⁷ “Moreover,” he continued, “this measure constitutes a clear mandate for which the state may be required to reimburse counties pursuant to the California Constitution and should therefore be considered in the annual budget process.”

The trend towards adopting local IRCs is likely to grow as the 2030 cycle approaches. In 2022 alone, in response to local redistricting controversies, the Legislature passed and Governor Newsom signed into law three bills establishing county IRCs in Kern, Riverside, and Fresno for future redistricting cycles.³⁸ Local leaders and community groups have also made fresh calls for independent commissions in a number of charter cities, like Los Angeles³⁹ and San Bernardino.⁴⁰ Finally, there is also strong public demand for independent local redistricting. A 2022 poll by *Capitol Weekly* found that 90% of California voters — including 90% of Democrats and 86% of Republicans — agreed that “all local redistricting should be done by independent commission,” compared with only ten percent saying it is “OK for local elected officials to conduct their own redistricting.”⁴¹

33 Voter Information Guide, “Argument in Favor of Measure L” (Nov. 8, 2016) (Note: The author was one of the signatories to this ballot argument). Compare this with the ballot argument for Proposition 11. Voter Information Guide, “Rebuttal to Argument Against Proposition 11” (Nov. 4, 2008) (“YES on 11 ends the conflict of interest of politicians drawing their own election districts. It means fair election districts drawn by citizens, not politicians, so we can hold them accountable and throw them out of office if they aren’t doing their jobs.”).

34 SB 1108 (Allen), Chapter 784, Statutes of 2016, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1108](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1108).

35 SB 1018 (Allen), Chapter 462, Statutes of 2018, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1018](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1018).

36 SB 958 (Lara), Chapter 781, Statutes of 2016, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB958](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB958), and AB 801 (Weber), Chapter 711, Statutes of 2017, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB801](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB801). The County of San Diego had previously supported successful legislation to create a county IRC composed of retired judges. SB 1331 (Kehoe), Chapter 508, Statutes of 2012, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1331](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1331). However, the County opposed the Weber bill, which replaced that IRC with one modeled more closely on the State CCRC.

37 Governor Newsom, Veto: SB 139 (Allen, 2019), [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB139](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB139).

38 They are: AB 1307 (Cervantes), Chapter 403, Statutes of 2022, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1307](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1307) (Riverside IRC); AB 2030 (Arambula), Chapter 407, Statutes of 2022, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2030](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2030) (Fresno IRC); AB 2494 (Salas), Chapter 411, Statutes of 2022 (Kern IRC), [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2494](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2494).

39 Elizabeth Chou, “After a rocky round of redistricting, LA city leaders move to consider more independent process,” *Los Angeles Daily News* (Dec. 8, 2021), www.dailynews.com/2021/12/08/after-a-rocky-round-of-redistricting-la-city-leaders-move-to-consider-more-independent-process/.

40 Maryjoy Duncan, “Committee recommends independent redistricting commission, Ranked Choice Voting for San Bernardino City,” *Inland Empire Community News* (Mar. 16, 2022), iecn.com/committee-recommends-independent-redistricting-commission-ranked-choice-voting-for-san-bernardino-city/.

41 *Capitol Weekly* (@CA_120), tweet image (Sep. 30, 2022, 9:16 am), twitter.com/CA_120/status/1575882355943710726.

III. EVALUATING THE 2020 LOCAL REDISTRICTING CYCLE & RECOMMENDATIONS FOR REFORM

California's 2020 local redistricting cycle was vastly different from any prior cycle in state history. As discussed previously, city and county redistricting was conducted under the FMA for the first time, which added new process and line-drawing requirements. The number of local jurisdictions redistricting, and particularly the number of cities, was also the largest in state history. In just the past decade, as a result of the California Voting Rights Act, more than 100 cities transitioned from at-large to by-district elections, requiring that they engage in redistricting for the first time. Redistricting was also uniquely complicated this cycle by the COVID-19 pandemic, which caused an unprecedented delay in the release of census data used for redistricting and also impacted local governments' ability to do redistricting outreach and hold public hearings.

The sections that follow evaluate the 2020 cycle across several dimensions of the local redistricting process, including the timeline for redistricting, transparency of the process, public engagement successes and challenges, consistency with the local criteria, and procedural and substantive differences when an advisory redistricting commission or an independent redistricting commission controlled the line-drawing process. Each section also provides policy recommendations for future redistricting cycles, informed by both the best practices and abuses observed in this cycle.

This evaluation, and the subsequent recommendations, was informed by a number of different sources, including:

- A statewide survey of local League of Women Voters chapters leaders monitoring or engaging with the local redistricting process in their areas;⁴²
- California Common Cause's field notes on the local redistricting process in more than 60 jurisdictions;
- Author interviews with county registrars of voters and city clerks, prominent local redistricting consultants, and the staff of almost two-dozen civic and voting rights organizations involved in local redistricting across the state;
- A survey of the staff of 14 civic and voting rights organizations ("organizational stakeholders") that were engaged in the local redistricting process this cycle;⁴³
- Local news media reports from across the state;
- Government reports on the local redistricting process, including independent redistricting commission final reports; and

42 League of Women Voters of California, "LWV California Local Redistricting Survey Results" (2022), lwvc.org/sites/default/files/LWVC%20Local%20Redistricting%202020%20Survey%20Report_0.pdf.

43 Author-designed and administered survey of organizational stakeholders (conducted online, May - Sep. 2022) (hereafter "Organizational Stakeholder Local Redistricting Survey (2022)"). Each interviewed staffer with a civic or voting rights organization was invited to complete the survey.

- Court filings involving challenges to local redistricting, including in Morgan Hill, Riverside County, San Luis Obispo County, and West Sacramento.

Interviewed Civic/Voting Rights Organizations

ACLU of Northern California
 ACLU of Southern California
 Alameda County Coalition for Fair Redistricting
 Asian Law Alliance
 Asian Americans Advancing Justice - Asian Law Caucus (ALC)
 California Common Cause
 California State League of United Latin American Citizens (LULAC)
 Catalyst California (formerly Advancement Project California)
 Central Coast Alliance United for A Sustainable Economy (CAUSE)
 Communities for a New California
 Community Coalition
 Council on American-Islamic Relations (CAIR) - Sacramento Valley
 Dolores Huerta Foundation
 Hmong Innovating Politics
 Inland Empowerment
 Jakara Movement
 League of Women Voters of California
 Mexican American Legal Defense and Educational Fund (MALDEF)
 Oakland Rising
 Organize Sacramento
 Partnership for the Advancement of New Americans (PANA)
 Thrive Alliance



1. TIMING

Late census data created a time crunch for counties and some cities.

The COVID-19 pandemic had a significant impact on redistricting across the nation, including at the local level. In California, one major consequence was that the time available for local redistricting was significantly compressed because of pandemic-related delays in the delivery of census data. For counties and some cities holding local elections with the statewide primary, the line-drawing period between the release of census data to the map adoption deadline shrank down to a little under four months. The vast majority of jurisdictions nonetheless successfully adopted maps on time; however, the compressed schedule led to some rushed map adoptions and created some administrative difficulties for county registrars of voters implementing the new lines. For cities holding elections with the statewide general election, which is most cities, the late release of census data was minimally disruptive because of their later redistricting deadline.

The late release of census data required adjustments to the elections calendar and redistricting deadlines and reduced the amount of time available for local redistricting.

Redistricting is intricately tied to the federal decennial census; under the FMA, local governments are required to use decennial census data and must complete the redistricting process prior to their first regular election after the release of census data. Under federal law, the Census Bureau was required to deliver redistricting data to the states by April 1, 2021. However, the pandemic delayed the Bureau’s data-collection and data-validation efforts, which resulted in this data being released to the states on August 12, 2021 — 4.5

months behind schedule — and only in a “legacy” format.⁴⁴ California’s Statewide Database, which prepares California’s official redistricting database, reformatted the data for preliminary use in redistricting on August 18, 2021.⁴⁵ The final official redistricting dataset, which included required population adjustments to count incarcerated persons at their last residence prior to incarceration, was publicly released a month later on September 20, 2021.⁴⁶

Normally, the FMA provides that cities and counties must complete the redistricting process 205 days before the jurisdiction’s next regular election after the release of census data.⁴⁷ For the majority of cities consolidating their local elections with the statewide general election in November 2022, this deadline, commonly referred to as “E-205” (“election day minus 205 days”), fell on April 17, 2022. This provided about eight months (242 days) after the release of census data (and seven months, or 209 days, after the release of adjusted census data) for the public to draw and submit draft maps and about 6 months (188 days) for the city council to draft and adopt its own maps. According to City Clerks Association of California Legislative Director and Temecula City Clerk Randi Johl, cities with the April deadline overall felt “comfortable with their redistricting workplan” and that they had the time to be “intentional in their public outreach.”⁴⁸

However, for counties and some cities that consolidate their elections with the statewide primary, the census data delays resulted in a significantly more compressed timeline. Originally, the 2022 statewide primary was scheduled to be in March, which, with an E-205 redistricting deadline, would have meant that the deadline to complete redistricting (August 15, 2022) would have passed before census data was ultimately available (August 18, 2022). However, anticipating that census data delays could have catastrophic impacts on state and local election administrability, the Legislature moved the statewide primary back from March to June 2022.⁴⁹ In addition, for the 2020 redistricting cycle only, the Legislature moved back the redistricting deadline to E-173 for counties and cities consolidating their elections with the statewide primary.⁵⁰ Combined, these changes resulted in a December 15, 2021 redistricting deadline for counties and cities with primary elections.

For counties and cities holding primary elections, this meant unadjusted census data was available for about four months (119 days) before the December redistricting deadline and adjusted census data — the data required for final maps — for about three months (86 days) before the deadline. While the public could begin drafting and submitting maps with adjusted or unadjusted data, the FMA prohibits a county or city from releasing its own draft map until adjusted census data is released, and potentially an additional seven or 28 day waiting period after that, to ensure the maps submitted by the public and community groups are considered early in the process.⁵¹ Accounting for the waiting period, primary election counties and cities thus had 2.5 months (79 days) from the point they could release draft maps until the December redistricting deadline. By comparison, with on-time census data and a June 2022 primary, there would have been

44 National Conference of State Legislatures, “2020 Census Delays and the Impact on Redistricting” (Sep. 23, 2021), www.ncsl.org/research/redistricting/2020-census-delays-and-the-impact-on-redistricting-637261879.aspx.

45 Senate Elections and Constitutional Amendments Committee, Analysis of SB 594 (Glazer), Senate Elections and Constitutional Amendments Committee (Sep. 1, 2021), leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB594 (Note: The author of this report also wrote this analysis).

46 California Statewide Database, “2021 Redistricting,” statewidedatabase.org/redistricting2021/ (last accessed Sep. 2022).

47 California Elections Code Sections 21501, 21602, and 21622.

48 Author interview, Temecula City Clerk Randi Johl (Sep. 12, 2022).

49 SB 970 (Umberg), Chapter 11, Statutes of 2020, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB970.

50 AB 1276 (Bonta), Chapter 90, Statutes of 2020, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20190200AB1276.

51 California Elections Code Sections 21508(d), 21608(d), and 21628(d).

around 7.5 months between the release of unadjusted census data and the map-adoption deadline and almost 6 months from the point jurisdictions could release draft maps to that deadline.⁵²

Despite the compressed timeline, the vast majority of cities and counties met the redistricting deadline, although many jurisdictions only adopted maps in the final weeks before the deadline. In a survey of 34 counties, 89% held a final redistricting hearing in the last two weeks before the deadline and nearly half (49%) adopted their maps on either the day before or day of the deadline.⁵³ Only two jurisdictions, both of which had deadlocked independent commissions, missed a self-imposed redistricting deadline: Oakland and San Francisco.⁵⁴ However, as a charter city and charter city and county, respectively, these jurisdictions were not subject to the FMA's redistricting deadline or its requirement that a court adopt jurisdiction maps when the deadline is missed.⁵⁵ In both cases, the commissions ultimately adopted new maps which were used in the 2022 elections.

A compressed timeline impacted public participation opportunities in some jurisdictions.

The compressed redistricting timeline for jurisdictions with primary elections meant less time was available for public comment and map revisions. In a survey of League of Women Voters chapter leaders engaged in local redistricting, 34% agreed that the “approval of final maps [felt] rushed.”⁵⁶ The tight timeline also meant that, if a community only found out about the redistricting process after mapping had begun, there could be very little time for that community to engage and request map adjustments. The League of Women Voters of San Diego County, for example, noted that the “Chaldean community reported they were not aware of potential [San Diego County] redistricting impacts to their community, learning of proposed boundary changes just three weeks before the final map deadline.”⁵⁷ Earlier public education and outreach, particularly in underrepresented communities, might have led to more neighborhood and community groups engaging at the start of the mapping process. Some jurisdictions waited until later in the process to do this outreach, closer to when census data or mapping tools were available. Temecula Clerk Johl, with the City Clerks Association, found that “if cities hadn’t started their public education around redistricting early on, like letting people know it was coming and the data was delayed, if they weren’t already engaging people, it was very difficult to do the outreach in the condensed time period.”⁵⁸

52 These calculations are based on (1) census data being released by the end of March 2021 and adjusted data being available by the end of April 2021, (2) a 21 day waiting period after the release of census data required under the FMA, and (3) a November 14, 2021 redistricting deadline (E-205) for a June 2022 statewide primary election. The original version of the FMA provided a similar amount of time for drawing and reviewing draft maps. AB 849 (Bonta, 2019), which contemplated a March 2022 election, had an E-151 redistricting deadline and no waiting period for a jurisdiction to produce draft maps, which provided around six months between the release of census data until the map adoption deadline. However, because an E-151 deadline conflicted with other deadlines in the Elections Code, the redistricting deadline was pushed up and was also adjusted to account for delayed census data in clean-up legislation the following year. See AB 1276 (Bonta), Chapter 90, Statutes of 2020.

53 Analysis by author (2022).

54 Darwin BondGraham, “Deadline blown, Oakland’s Redistricting Commission hopes to adopt a final map soon,” *Oaklandside* (Jan. 18, 2022), oaklandside.org/2022/01/18/deadline-blown-oakland-redistricting-commission-final-map/ and Joe Kukura, “San Francisco’s New Supervisor Districts Finally Approved by Redistricting Task Force,” *SFist* (Apr. 22, 2022), sfist.com/2022/04/22/san-francisco-new-supervisor-districts-finally-approved-by-redistricting-task-force/.

55 California Elections Code Section 21629(c).

56 League of Women Voters of California, “LWV California Local Redistricting Survey Results” (2022).

57 Letter from Kim Knox with the League of Women Voters of San Diego and Karen Sutton with the League of Women Voters of North County to the San Diego Independent Redistricting Commission (Jan. 11, 2022), lwwsandiego.org/content.aspx?page_id=5&club_id=681146&item_id=71979&.

58 Author interview, Temecula City Clerk Randi Johl (Sep. 12, 2022).

A later redistricting deadline impacted election administration.

The compressed redistricting timeline also caused some election administration issues.⁵⁹ For jurisdictions with primary elections, pushing back the local redistricting deadline to December 15 also required pushing back and truncating, depending on when new maps were adopted, the period of time in which candidates could collect signatures in-lieu of paying a candidate filing fee. To minimize the disruption to candidates from this change, the number of required in-lieu signatures was reduced in proportion to the decrease in time.⁶⁰ Because the start of the signature in-lieu period depended on when each jurisdiction adopted a final map, this starting date differed between jurisdictions. While this lack of consistency between counties was “annoying” for registrars because it “created a mixed message for candidates” in different counties, according to Santa Cruz County Registrar Tricia Webber, who also serves on the legislative committee of the California Association of Clerks and Election Officials, registrars were nonetheless able to implement the change and educate candidates without major problems.⁶¹

More significantly, the later state and local redistricting deadline also impacted reprecincting, which is when county registrars redraw their voting precincts so that they align with newly-adopted election district boundaries. Later redistricting meant there was less time for county registrars to reprecinct and verify the accuracy of those precincts before the opening of the candidate nomination period. Some counties failed to reprecinct by the candidate filing deadline, and had to instead check addresses against election district maps to make sure candidates were filing for, and collecting nomination signatures for, the correct office. Similarly, pushing back the statewide primary from March to June meant there was less time between certifying the statewide primary election results and then reprecincting again for the November general election, to account for local election district lines newly adopted between the statewide primary and general election. For example, at least three counties mailed ballots to the wrong voters because of reprecincting mistakes which might have been caught with more time, although in each case the errors appear to have been corrected before election day.⁶² Despite the time pressures, county registrars seem to have been overall successful in implementing new state and local lines in 2022: the process “mostly went well,” said Santa Cruz County Registrar Webber, “with some errors” that seem to have been mostly fixed before voting began.⁶³

Recommendations

→ Recommendation 1.1: Revisit the 2030 redistricting cycle timeline in 2028 or 2029.

While the 2020 local redistricting cycle was uniquely compressed because of the COVID-19 pandemic, the 2030 cycle is likely to see almost the exact same timing constraints for counties and cities that consolidate their elections with the statewide primary, even if there are no delays in the reporting of census data. Under current state law, the statewide primary alternates between being held in June in

59 Author interview, Orange County Registrar of Voters Bob Page, Placer County Registrar of Voters Ryan Ronco, and Santa Cruz County Registrar of Voters Tricia Webber (Sep. 7, 2022).

60 California Elections Code Sections 21501(a)(2) and 21622(a)(2).

61 Author interview, Santa Cruz County Registrar of Voters Tricia Webber (Sep. 7, 2022).

62 Steven Felschundneff, “Council district map snafu causes confusion among voters,” *Claremont Courier* (Oct. 13, 2022), [claremont-courier.com/latest-news/council-district-map-snafu-causes-confusion-among-voters-70338/](https://www.claremont-courier.com/latest-news/council-district-map-snafu-causes-confusion-among-voters-70338/); Jessica Skropanic, “300 west Redding voters mailed wrong ballot for Nov. 8 general election,” *Record Searchlight* (Oct. 11, 2022), www.redding.com/story/news/2022/10/11/redding-california-voters-mailed-wrong-ballot-november-2022-midterm-election/10472290002/; and Abbie Lauten-Scrivner, “Inaccurate general election ballots sent to Merced County voters. What happens now?,” *Merced Sun-Star* (Oct. 13, 2022), www.mercedsunstar.com/news/local/article267234817.html.

63 Author interview, Santa Cruz County Registrar of Voters Tricia Webber (Sep. 7, 2022).

non-presidential years and March in presidential years.⁶⁴ For the 2020 cycle, local redistricting deadlines were set to the 2022 statewide primary, which, as a non-presidential year, was held in June. However, for the 2030 cycle, the deadlines will be set based on the 2032 statewide primary, which, as a presidential election year, will be held in March. As a result, even though the 2030-cycle is unlikely to experience a four-month delay in the release of census data, this added line-drawing time is mostly offset by the primary election being several months earlier, which moves up the local redistricting deadline along with it. As the chart below illustrates, in counties and cities holding their elections with the statewide primaries in 2032, residents and community groups will only have unadjusted data for about two more weeks than was the case in the 2020 cycle, and local governments will only have two additional days for releasing and revising draft maps.

Timeline Comparison: Hypothetical and Actual 2020 Cycle vs Expected 2030 Cycle

	Hypothetical 2020 Cycle Timeline With No Data Delay	Actual 2020 Cycle Timeline	Expected 2030 Cycle Timeline
Census Data (CD)	3/31/21	8/18/21*	3/31/31
Adjusted Data (AD)	4/30/21 (CD + ~30)	9/20/21 (CD + 33)	4/30/31 (CD + ~30)
First Possible Draft Map	5/21/21 (AD + 21)	9/27/21 (AD + 7)	5/21/31 (AD + 21)
Redistricting Deadline	11/14/21 (E - 205)	12/15/21 (E - 174)	8/10/31 (E - 205)
Election Date (E)	6/7/22	6/7/22	3/2/32
Days from Census Data Release to Deadline	228	119	132
Days from First Possible Draft Map Release to Deadline	177	79	81

*Census data was available in the legacy format on 8/12/21 but was reformatted to be useable for redistricting on 8/18/21.

Based on local jurisdictions’ and community groups’ experiences this cycle, the above timeline for the 2030 cycle is doable, but a lengthier timeline is preferable. The State Legislature should re-examine the local redistricting deadline to explore whether adjustments should be made to the elections calendar to permit more time for the public and local governments to draft maps before the adoption deadline. This might include again pushing back the redistricting deadline for those jurisdictions that consolidate their elections with the statewide primary and adjusting other elements of the elections calendar to accommodate the change, which might include compressing the signature in-lieu period.⁶⁵

64 California Elections Code Section 1201.

65 See AB 1276 (Bonta), Chapter 90, Statutes of 2020.

However, any amendments to the FMA that may require creating one-time exceptions to elections calendar and redistricting deadlines should be deferred until 2028 or 2029, when the date of the 2032 primary will be more certain. The expected March 2032 primary date may well change and, if history is any indication, likely will change. Since 1992, the State Legislature has passed seven bills changing the date of the statewide primary, or about one bill every four years.⁶⁶

→ **Recommendation 1.2: Conform the map-adoption deadline for all local redistricting.**

The general FMA redistricting deadline for counties and cities was changed in 2020 to accommodate the election administration needs of county registrars; however, the redistricting deadlines for schools and special districts have not changed in decades, and no longer align with the elections calendar.

School districts have a fixed redistricting deadline that does not adjust depending on the date of a district's local elections. County boards of education trustee areas must be redistricted by March 1 and school board and community college board trustee areas by February 28 "of the year following the year in which the results of each decennial census are released," which is every year ending in the number two (i.e. 2022 in the 2020 cycle and 2032 in the 2030 cycle).⁶⁷ For the dozen or so school districts whose elections were consolidated with the statewide primary, this deadline was not possible, since it occurred after the start of the candidate nomination period, and election district lines must already be in place for candidates to be able to collect nomination signatures from district voters.⁶⁸ For the majority of school districts that consolidate their elections with the statewide general election, the February 28/March 1 deadline worked, but was unnecessarily early and could have been pushed out by more than one month.

Under state law, special districts may not adjust their division boundaries within 180 days of a regular election.⁶⁹ However, after registrars expressed concern that this deadline could impact their ability to precinct on time, the Legislature amended the redistricting deadline for special districts that consolidate their elections with the statewide general election to E-205 — the same deadline required of cities under the FMA — but for the 2020 redistricting cycle only.⁷⁰

The 2020 cycle-only deadline change for special districts should be made permanent for future redistricting cycles. The deadline for school districts should be similarly adjusted to match the FMA deadlines for counties and cities. Standardizing the redistricting deadline for all local governments would create a more predictable local redistricting cycle for the public, and would better balance the needs of school and special districts to have sufficient time to adopt new lines with the needs of county registrars of voters to have sufficient time to implement those lines ahead of a regular election.

→ **Recommendation 1.3: Change the redistricting deadline to land on a Monday, not a Sunday.**

In the 2020 redistricting cycle, the FMA's E-205 redistricting deadline fell on *Sunday*, April 17, for jurisdictions with November 2022 elections. Because statewide primary and statewide general elections are always held on a Tuesday, 205 days before that will always be a Sunday, which will also be the case

66 Assembly Committee on Elections and Redistricting, SB 970 (Umberg) Analysis (Jul. 24, 2020), [leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB970](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB970).

67 California Education Code Sections 1002(b)-(c) and 5019.5(b).

68 See California Secretary of State, "Key Dates and Deadlines Statewide Direct Primary Election — June 7, 2022," elections.cdn.sos.ca.gov/statewide-elections/2022-primary/key-dates-deadlines.pdf (accessed Oct. 2022).

69 California Elections Code Section 22000(d).

70 SB 594 (Glazer), Chapter 320, Statutes of 2021 (temporarily adding California Elections Code Section 22000.1).

for the 2032 local redistricting cycle. However, Sunday deadlines can create needless confusion: is the true deadline that Sunday, or the following Monday? Legally, it seems likely that the deadline does extend to the next business day, i.e. Monday. The Elections Code generally provides that any deadline that falls on a holiday can be performed on the next business day, and defines holidays to include Sundays.⁷¹ However, the FMA expressly contemplates local governments holding hearings on Sundays and the Legislature expressly chose a deadline that always lands on a Sunday, so an argument could be made that this choice was intentional, and in other contexts courts have treated elections-related filing deadlines strictly.⁷²

To eliminate this ambiguity, the FMA should be amended to create a weekday deadline for redistricting. Between Friday (E-207) and Monday (E-204), Monday would provide a jurisdiction with a little more flexibility to hold an additional hearing if last-minute adjustments are needed on a final map. In the last 28 days before a redistricting deadline, the FMA permits a jurisdiction to adopt a final map which was published online for at least three days.⁷³ An E-204 deadline would allow a jurisdiction to adjust a draft map as late as Friday in the week before the deadline and then hold a special meeting on the following Monday to adopt the map in compliance with the posting requirements. By contrast, with a Friday adoption deadline, the last day a draft map could be adjusted is the Tuesday of that same week.



2. TRANSPARENCY

FMA reforms made for a far more transparent local redistricting process, although some jurisdictions failed to follow notice and publication requirements.

One of the primary goals of the FMA was to make city and county redistricting more transparent to better allow the public and community groups to engage in the process. Among other requirements, local governments were required to create a redistricting webpage; post information on the redistricting process and how to participate in English and, for some jurisdictions, other languages; provide earlier notice of meetings; and publish draft maps in advance of their adoption.

The FMA's goal of increasing transparency was largely achieved. Overall, local governments successfully implemented these new transparency rules. In the League of Women Voters of California survey, 73% of local chapter leaders agreed that local governments had “follow[ed] the [FMA] process rules,” compared with only 11% who disagreed (and the remainder were not sure).⁷⁴ Temecula City Clerk Randi Johl, with the Clerks Association, said that from her observations, too, most “cities were able to handle the process requirements fine.”⁷⁵

Even so, some local governments fell short of the FMA's notice or posting requirement, especially initially, and some jurisdictions took advantage of ambiguities in the law to post documents late or not at all. Good government and civic organizations sent out dozens of letters to local governments pointing out process violations this cycle, many of which were later corrected. However, unlike other California local government

71 California Elections Code Section 15 and California Government Code Section 6700(a)(1).

72 See, e.g., *Barnes v. Wong*, 33 Cal. App. 4th 390 (1995).

73 California Elections Code Sections 21508(d), 21608(d), and 21628(d).

74 League of Women Voters of California, “LWV California Local Redistricting Survey Results” (2022).

75 Author interview, Temecula City Clerk Randi Johl (Sep. 12, 2022).

transparency laws, like the Brown Act for local government meetings or the Public Records Act for government records, the FMA lacks a defined process for a party to raise and the jurisdiction to cure these violations.

To assist local governments in meeting their posting requirements, the Secretary of State's Office was also required to create templates with general redistricting information in English and other mandated languages that local governments could adapt for their webpages. The Secretary of State's Office did so; however, the templates included a small number of inaccuracies, which were then replicated by many local governments, and translations were not provided for every mandated language.

More notice led, in most cases, to a more transparent process.

The FMA vastly increased the transparency of the local redistricting process, although some abuses still occurred. Prior to the FMA, there were no laws requiring any greater notice for redistricting than existed for government meetings generally. Under the Brown Act, which provides open meeting standards for all local government meetings, agendas generally need to be posted three days in advance.⁷⁶ In the redistricting context, however, it can be difficult to muster significant community participation for a public hearing with only three days notice. Moreover, under the Brown Act, documents associated with agenda items are not required to be published in advance: pre-FMA a draft map could, therefore, be provided for the first time to the legislative body and public at a public hearing, and then be adopted by the legislative body at that same meeting.⁷⁷ In such a scenario, the public and community groups would have no time to study and respond to a proposed map.

Under the FMA, redistricting meetings generally needed to be noticed at least five days in advance.⁷⁸ Equally important, the FMA also required that jurisdictions publish an online calendar of their anticipated public hearing dates.⁷⁹ Because of this calendar requirement, the public and community groups often had notice of redistricting hearings weeks to months in advance, instead of just days, and could schedule their testimony or activities around those dates. In addition, the FMA required jurisdictions to maintain a list of people interested in receiving information on the redistricting process;⁸⁰ some jurisdictions, like Anaheim and Orange County, helpfully emailed notices of upcoming hearings to this list.⁸¹

The League of Women Voters of California, summarizing its survey results, found that most jurisdictions complied with the FMA's different notice requirements, but "there were a number of examples of real problems" in some jurisdictions, the most "glaring [of which] was the lack of adequate public notice — or sometimes no public notice — of public meetings."⁸² Some jurisdictions failed to post their redistricting calendars online until right before or sometimes even after the first hearing, and many did not regularly notify interested persons of upcoming meetings; predictably, poor or no notice hurt turnout at the first few public hearings in many jurisdictions. For example, the League of Women Voters of Tulare County noted that Visalia's first public hearing "was attended by zero members of the public. Even though LWVTC had

76 California Government Code Section 54954.2(a)(1).

77 The Brown Act allows materials relating to an agenda item to be provided less than 72 hours before a meeting. See California Government Code Section 54957.5(b) and (c).

78 California Elections Code Sections 21508(c), 21608(c), and 21628(c). Meeting notice could be reduced to three days in the last 28 days before the map adoption deadline.

79 California Elections Code Sections 21508(g)(3), 21608(g)(3), and 21628(g)(3).

80 California Elections Code Sections 21508(a)(2), 21608(a)(2), and 21628(a)(2).

81 Organizational Stakeholder Local Redistricting Survey (2022), comment by Julia Gomez with the ACLU of Southern California.

82 League of Women Voters of California, "LWV California Local Redistricting Survey Results" (2022).

been asking City officials and staff when they would be initiating their process, we, too, were unaware of this initial meeting.”⁸³

This cycle draft maps had to include demographic information and be posted in advance of adoption.

The FMA also requires that draft maps generally be published online a week before adoption, which mostly prevented last minute adoption of surprise maps this cycle.⁸⁴ Maps produced by the jurisdiction also needed to include the “racial and ethnic characteristics of the citizen voting age population” (CVAP) of each district, which is necessary for ensuring that districts comply with the federal Voting Rights Act.⁸⁵ Combined, these rules guaranteed the public more time to study draft maps before adoption, and the information to better understand how a proposed map would affect community representation.

Jurisdictions mostly followed these map posting requirements; however, organizational stakeholders documented a number of clear violations of the FMA and other instances where a jurisdiction may have followed the letter but not spirit of the law. For example, MALDEF reported that many jurisdictions did not provide the required CVAP data with each map until they were warned of the violation by voting rights organizations. The City of Banning was one of the “worst offenders on the FMA,” explained Gabriel Lizardo, National Redistricting Program Assistant with MALDEF. Initially, the city “just sort of ignored [the law] ... [and] didn’t have CVAP for any maps.”⁸⁶

Kings County provides a different example of a jurisdiction opting for technical over substantive compliance with the FMA. At the county’s December 7, 2021, public hearing only two draft maps were listed for consideration; however, after public comment on those maps concluded, the Board instead picked out and adopted a different, anonymously-submitted map that had been posted to the county’s webpage eight days prior but was never the subject of Board discussion.⁸⁷ Community members who had participated in the months-long redistricting process were outraged at the lack of notice and accused the Board of ignoring hours of testimony only to “pull this map out of thin air and adopt it. A map that is almost an exact replica of the current maps.”⁸⁸ The adoption of late, anonymously-submitted maps seemingly benefitting incumbents was also a recurring theme this cycle.⁸⁹

Local redistricting webpages were a particularly helpful resource for the public to follow and engage in the local redistricting process; however, some jurisdictions delayed or failed to post relevant information to these webpages.

One of the FMA’s most important transparency provisions was to require local governments to establish, and maintain for ten years, a dedicated redistricting webpage. The webpage is a centralized repository of redistricting information that must include: a general explanation of the redistricting process, procedures for testifying or submitting written comment, a calendar of all hearing and workshop dates, meeting notices and agendas, meeting notes or recordings, each draft map considered by the legislative body, and the adopted final map.⁹⁰ Organizational stakeholders credited the webpage requirement for making it far

83 *Ibid.*

84 California Elections Code Section 21508(d)(1), 21608(d)(1), and 21628(d)(1).

85 California Elections Code Sections 21508(d)(2), 21608(d)(2), and 21628(d)(2).

86 Author interview, Gabriel Lizardo with MALDEF (Apr. 28, 2022 and May 5, 2022).

87 María G. Ortiz-Briones, “Kings County supervisors adopt anonymously drawn map over public opposition,” *Fresno Bee* (Dec. 14, 2021), www.fresnobee.com/vida-en-el-valle/noticias/article256596446.html.

88 *Ibid.*

89 See, e.g., Evan Tuchinsky, “Battle Lines,” *Chico News Review* (Apr. 6, 2022) (allegations anonymous map was adopted to benefit conservatives), chico.newsreview.com/2022/04/06/battle-lines/.

90 California Elections Code Sections 21508(g), 21608(g), and 21628(g).

easier for the public and community groups to track and engage in the redistricting process. For example, in prior cycles there was no requirement for a jurisdiction to affirmatively post a redistricting schedule online, so community groups might have to monitor every meeting of the local legislative body in case redistricting was agendized. Finding draft maps or prior meeting deliberation was also difficult, and might take looking through records of dozens of prior meetings to identify. Kathy Ramirez, formerly the Western Regional Redistricting Coordinator for MALDEF, explained that many of these problems still existed “in terms of monitoring special and school districts,” which were not required to create a dedicated webpage like FMA jurisdictions. “One of the big challenges was finding the timelines and information on their website,” Ramirez said of jurisdictions not covered by the FMA. “It was hard to find the redistricting items, since they might be [part of] any agenda [of the board]. It was hard to even find if a map was already adopted.”⁹¹

For the most part, cities and counties created compliant and accessible redistricting webpages. In the League of Women Voters survey, 86% of respondents felt jurisdictions’ webpages were “adequate in terms of providing necessary information and user-friendly.”⁹² Many local Leagues were satisfied with the local redistricting webpages of their county or city: Tulare County’s webpage, wrote one League volunteer, was “simply thorough, timely, complete, user-friendly, transparent and accurate, and available in two languages.” Other local Leagues were more measured: Escondido’s webpage, wrote another respondent, is “slightly difficult to navigate, but the essential information is there.”

However, there were a number of jurisdictions that did not comply with the requirements or were slow to do so. Some of these violations were repeated across several jurisdictions. First, one of the most common violations was a jurisdiction failing to create its redistricting webpage before its first public hearing. For example, according to California Common Cause’s local redistricting monitoring notes, this occurred in both Bakersfield and La Mirada and it was only “after formal notice by local organizations, including California Common Cause, [that] both jurisdictions eventually publish[ed] a website or webpage.”⁹³ The FMA does not provide a deadline for when a redistricting webpage must be created; however, failing to do so before the first hearing undercut a clear goal of the FMA to make the timing of these hearings – and an explanation of how to participate in them – easily accessible to the public.

Second, many jurisdictions’ webpages, at least initially, lacked statutorily-required information. For example, Asian Americans Advancing Justice - Los Angeles and California Common Cause sent a letter to La Mirada documenting several webpage violations, including a failure to: (1) provide an explanation of the redistricting process and procedures for submitting public comment, (2) translate information into mandated non-English languages, (3) post agendas for prior or upcoming meetings, and (4) post or link to recordings or written summaries of past hearings.⁹⁴ In other instances, required information might be scattered across multiple webpages, rather than centralized on the redistricting webpage as the FMA required. According to Common Cause field notes, the City of Glendora initially did not post or link to meeting minutes or recordings on its redistricting webpage; instead, public hearing recordings were archived on the city council’s webpage with all other council meeting recordings, making these records difficult for the

91 Author interview, Kathy Ramirez with MALDEF (Apr. 28, 2022 and May 5, 2022).

92 League of Women Voters of California, “LWV California Local Redistricting Survey Results” (2022).

93 California Common Cause, Internal Staff Memo on Local Redistricting Observations (Jan. 12, 2022).

94 Letter from Sean McMorris of California Common Cause and Charles Evans of Asian Americans Advancing Justice - Los Angeles to La Mirada City Council, “RE: La Mirada City Council Redistricting” (Sep. 28, 2021).

public to find.⁹⁵ Fullerton at one point had two redistricting webpages, making it unclear which page had the most updated information.⁹⁶

Finally, in numerous instances, records of prior meetings or public comments were posted late, or not at all. The FMA requires that meeting recordings or summaries be posted within two weeks of a hearing; yet, in a review of local webpages, California Common Cause found that several jurisdictions — including Duarte, Indio, City of Madera, and Stanislaus County — had failed to post these materials more than a month after a hearing occurred.⁹⁷ Common Cause staff observed that even legally-compliant posting near the end of the two-week deadline could be detrimental to public participation: “By allowing 14 days [for posting], the FAIR MAPS Act permits local jurisdictions to host a new hearing before materials from the last hearing are posted, a huge problem for transparency and public participation. Jurisdictions frequently abused the process by waiting until the last days of the statutory period to make their materials public.”⁹⁸ This delay could be especially problematic towards the end of the map adoption deadline, where late posting could mean “the public is denied [the] opportunity to review a key meeting during the peak decision-making period in the process.”

In some jurisdictions, written public testimony was not posted to the webpage at all, a transparency omission that takes advantage of a loophole in the FMA.⁹⁹ The FMA requires jurisdictions to post each draft map submission considered by the jurisdiction and even requires that a recording or written summary of each public comment made *at* a public hearing be posted to that webpage; however, the FMA is silent as to written public comment submitted *outside* of a hearing or workshop,¹⁰⁰ which some jurisdictions may have taken to mean they were not required to post these comments. In Fresno County, for example, California Common Cause staff documented that, on several occasions, the “Board of Supervisors failed to post the written public testimony it received on its website for public view and it was only after local advocates urged the County Board to post all forms of public testimony [that] they accede[d].”¹⁰¹ In general, written submissions were not prominently featured or acknowledged by the legislative body in many jurisdictions, leading some organizational stakeholders to conclude that written comments were not being given the same weight as oral comments and perhaps not being reviewed at all. For example, Petra Siltan, Senior Director of Programs for Thrive Alliance, said that in San Mateo County “the process between where the testimony goes and who reads it is a little broken, because when we submitted community of interest testimony to the county, supposedly the Board of Supervisors read it, but I don’t think they actually did.”¹⁰²

Secretary of State templates were useful but contained a number of inaccuracies.

Under the FMA, cities and counties were required to post on their webpage information about the redistricting process and how to provide public comment, which most did. For some cities and counties, the FMA also required that this information be translated into certain languages spoken by a sufficiently large proportion of the population.¹⁰³ To assist with compliance, the FMA required that the Secretary of State (SOS) create

95 California Common Cause, Internal Staff Memo on Local Redistricting Observations (Jan. 12, 2022).

96 Letter from Kayla Asato with Orange County Environmental Justice, *et al.*, to Fullerton City Council, “RE: Public Comment on the City Council Redistricting Process December 15, 2021, Advisory Commission Meeting” (Dec. 15, 2021).

97 California Common Cause, Internal Staff Memo on Local Redistricting Observations (Jan. 12, 2022).

98 *Ibid.*

99 California Elections Code Sections 21508(e), 21608(e), and 21628(e).

100 California Elections Code Sections 21508(g)(5)-(6), 21608(g)(5)-(6), and 21628(g)(5)-(6).

101 California Common Cause, Internal Staff Memo on Local Redistricting Observations (Jan. 12, 2022).

102 Author interview, Petra Siltan with Thrive Alliance (May 11, 2022).

103 California Elections Code Sections 21508(g), 21608(g), and 21628(g).

templates of a “general explanation of the redistricting process” and “procedures for a member of the public to testify during a public hearing or to submit written testimony.”¹⁰⁴ These templates had to be produced in English and translated into every applicable language required of any jurisdiction. Counties and cities could use these templates to meet their obligation to post information on the local redistricting process.

For the 2020 cycle, the SOS posted four separate templates for redistricting (1) by a city council, (2) by a city redistricting commission, (3) by a board of supervisors, or (4) by a county redistricting commission. These templates were produced in ten languages: English, Chinese, Hindi, Japanese, Khmer, Korean, Spanish, Tagalog, Thai, and Vietnamese.¹⁰⁵ Demonstrating their utility, the templates were widely used by cities and counties;¹⁰⁶ however, organizational stakeholders and demographers pointed out some inaccuracies and limitations with the documents the SOS produced.

First, the templates included a number of small errors, which were subsequently reproduced by jurisdictions using the templates.¹⁰⁷ For example, the templates made the following mistakes or omissions summarizing the FMA redistricting criteria:

- “Contiguity” is defined as “each district should share a common border with the next.” This language is not in the statute and is incorrect. In redistricting, a district is contiguous if all parts of the district are connected; a district is not contiguous if it is divided into two or more pieces.
- Respecting the “geographic integrity of a city” was listed in the templates as a *city* redistricting criterion, which is of course not possible since the purpose of city redistricting is to subdivide a city into districts. Respecting city integrity is only a *county* criterion.
- Respecting the integrity of census designated places, which are mostly unincorporated towns, should have been but was not listed in the templates as a county criterion, despite this criterion being ranked equal to preserving city integrity under the FMA.

Second, some organizational stakeholders felt the templates could have been improved by providing additional information on how the public could engage in the redistricting process. For example, although the FMA requires that jurisdictions keep a list of people wishing to be notified of the redistricting process, the templates did not specify how the public could sign-up for these notices. In addition, the templates could have notified the public that live translation of redistricting hearings was available in certain applicable languages upon request, and how to submit that request. Some jurisdictions, on their own, provided guidance to the public on what constitutes a community of interest (COI) and how to submit COI testimony; some organizational stakeholders felt this type of information was helpful to the public and could be made more widespread if the SOS provided a template.

Finally, while the SOS templates were translated into nine additional languages, this fell short of the 14 languages required in different cities and counties across the state by the FMA. Missing languages included

104 California Elections Code Sections 21508(j), 21608(j), and 21628(j).

105 California Secretary of State, “City and County Redistricting Process,” www.sos.ca.gov/elections/helpful-resources/redistricting (accessed Sep. 2022).

106 A sample of jurisdictions that used some or all of the language on the templates include: Alpine County, Ceres, Concord, Contra Costa County, Garden Grove, Fontana, Inglewood, Lincoln, Mariposa County, Menlo Park, Orange County, Palmdale, Plumas County, Santa Cruz, Santa Rosa, South San Francisco, Sutter County, and Windsor.

107 See, e.g., City of Fontana, “Redistricting Information,” www.fontana.org/3429/Redistricting-Information (accessed Sep. 2022).

Amharic (e.g. Turlock), Arabic (e.g. El Cajon), Punjabi (e.g. Yuba City), Russian (e.g. West Sacramento), and Somali (e.g. El Cajon).¹⁰⁸ Even without the templates in these languages, some jurisdictions, like El Cajon, provided translated information on their redistricting webpages; however, other jurisdictions, like Turlock, did not.¹⁰⁹ Helpfully, some jurisdictions took advantage of the SOS templates to provide information in languages beyond those legally required of their jurisdiction under the FMA, but that are spoken by a substantial portion of the jurisdiction's population.¹¹⁰

Recommendations

→ **Recommendation 2.1: Require consultation with external stakeholders and a public review period before the SOS finalizes its local redistricting templates.**

Overall, the SOS produced useful templates that were copied by dozens of jurisdictions. However, the 2020 cycle shows that external public review and feedback would help to ensure the accuracy and improve the usefulness of these documents. The FMA should be amended to require that the SOS consult with good government organizations, voting rights organizations, and associations representing cities and counties before publishing its templates. The SOS should also be required to publish these templates in draft form on its webpage for a public comment period before adopting the templates.

Once the final versions of the English-language templates are adopted, the SOS should proceed to create translated templates for every applicable language. These translations should also be posted in draft form for a public review period so that individuals and organizations representing communities speaking those languages can review them for accuracy and readability.

→ **Recommendation 2.2: Require that redistricting webpages be created at least two weeks before the first public hearing.**

The redistricting webpage is a crucial, one-stop resource that provides the public with instructions on how to participate in redistricting, informs people of upcoming meetings, and hosts prior public comment, board deliberation, and draft maps. Having the webpage set up before workshops and hearings begin is critical for both transparency and public engagement. If the webpage is set up too late, residents may not become aware of the process until after draft maps are already in circulation, when making significant line changes to accommodate communities or neighborhoods can be more difficult. In addition, if a jurisdiction delays setting up its webpage, there is an increased likelihood that the jurisdiction will violate other online posting requirements, like posting hearing recordings or minutes online within two weeks. Most jurisdictions did set up their webpages before hearings began without problem; the FMA should be amended to clarify that this is required of all jurisdictions.

→ **Recommendation 2.3: Shorten the time period for publicly posting meeting video/minutes of hearings to one week, or before the next hearing.**

The FMA requirement that meeting recordings and minutes must be posted within two weeks makes it so that, when subsequent meetings take place in the following week, critical materials and records may not yet be available for the public. Records of prior deliberation, including which draft maps are under

108 California Secretary of State, "City and County Redistricting Process," www.sos.ca.gov/elections/helpful-resources/redistricting (accessed Sep. 2022).

109 Compare City of El Cajon, "Redistricting," www.elcajon.gov/your-government/elected-officials/redistricting (accessed Sep. 2022), with City of Turlock, "The Redistricting Process," redistrictturlock.org (accessed Sep. 2022).

110 For example, Sacramento County provided its redistricting information in all available template languages. See Sacramento County, "Redistricting Process," redistricting2021.saccounty.gov/Pages/RedistrictingProcess.aspx (accessed Sep. 2022).

consideration, enable the public and community organizations to meaningfully and effectively participate in public hearings. The timely publication of hearing records is especially necessary in the final month before the map adoption deadline, when a jurisdiction may have to hold several hearings scheduled in close succession to meet that deadline. The FMA should be amended to shorten the turnaround time for posting meeting records and to guarantee that they will be available prior to the next hearing.

→ **Recommendation 2.4: Require public posting of all non-verbal public comments received by the jurisdiction, including written comments or draft community of interest maps.**

Written comments, which might include webpage submissions, emails, paper letters, COI description forms, or even hand-drawn COI maps, were a significant channel for public testimony this cycle. For example, during its 2021 redistricting, Los Angeles County received 3,800 written comments compared with 599 oral comments.¹¹¹ Written comments allowed people to share more detailed and nuanced testimony than could be said in a two-to-three minute oral comment and also opened the redistricting process up to people who would otherwise be unable to attend public hearings. Just like draft maps or oral comments made at public hearings, written comments should be memorialized as part of the official public record of a jurisdiction's redistricting process and posted to the webpage, closing the loophole in the FMA mentioned above. Written submissions should also be included as an attachment to the agenda of any upcoming hearing so that the public and decision-makers can easily find, review, and react to these submissions.

→ **Recommendation 2.5: Create a clear legal process for noticing and curing FMA process violations.**

Community and voting rights organizations noted many process violations this cycle; in many cases, upon being informed, local governments would correct the violation, but often the correction would happen weeks to months after the fact. There is no clear process under the FMA to require local governments to consider and correct, in a timely manner, process violations. The FMA also does not specify any penalties for process violations, like requiring additional public hearings when a jurisdiction fails to adequately notice a meeting.

The FMA should be amended to provide a defined process for raising process violations and curing them in a timely fashion. Under the Brown Act, for certain local government open meetings violations, like failing to post an agenda 72 hours in advance of a meeting, a complainant must give a jurisdiction notice of the violation within 90 days of its occurrence; the local government then has 30 days to correct (or “cure”) the violation. If the local government refuses or fails to correct the violation, the complainant may sue to nullify local government action taken in violation of the Brown Act and, if successful, the complainant may be awarded attorney's fees.¹¹² The FMA should provide a similar streamlined process for bringing complaints which prohibits litigation unless a jurisdiction has notice of and still fails to correct a violation. However, because the redistricting process occurs in a very short time window — for example, counties and cities holding their elections with the statewide primary have just a few months between the release of census data and the map adoption deadline — the period of time for a person to give notice of a violation and for a jurisdiction to cure it should be shortened. If, after a jurisdiction fails to correct a noticed violation, and a plaintiff proves in court that a violation occurred, the FMA should provide a range of potential remedies, including nullifying any action taken at an improperly held

111 Los Angeles County Citizens Redistricting Commission, “Final Report” (Dec. 15, 2021), redistricting.lacounty.gov/wp-content/uploads/2021/12/Final_Report_12_15_21.pdf.

112 See California Government Code Sections 54960 and 54960.1.

meeting, ordering the jurisdiction to hold an additional meeting, and, if the jurisdiction fails to correct the action or unreasonably delays in doing so, awarding attorney fees to the plaintiff.



3. PUBLIC PARTICIPATION

New redistricting rules and remote access policies significantly increased public and community engagement in the 2020 cycle.

Most stakeholder organizations and demographers consulted for this report that were involved in California’s 2010 and 2020 local redistricting cycles agreed that, overall, public and community group participation was much higher this cycle than a decade ago.¹¹³ “It was remarkable to see so many coalitions form around redistricting and bring people out during the public comment process,” said Angélica Salceda, Democracy and Civic Engagement Director at the ACLU of Northern California. “In some jurisdictions, redistricting hearings were notoriously long — hours long — because of the large number of individuals providing public comment and engaging in the process.”¹¹⁴ Steven Ochoa, National Redistricting Coordinator for MALDEF, similarly observed that in California “there was more local organizational engagement this time around than in the prior cycle. There were more regional tables and more people participating.”¹¹⁵

There are a number of factors that likely contributed to this increase in participation. Because of increased media coverage of national and state redistricting, the public and organizations were more aware of this process and its importance than ever before. In many jurisdictions, the public and local groups also had recent direct experience with local districting. During the 2010s, hundreds of California local jurisdictions switched from at-large to district-based elections, which familiarized community groups across the state with districting advocacy and helped them build the groundwork for, and caused them to prioritize, local redistricting. There was also significant state and foundation financial support for nonprofits to engage in census outreach efforts this cycle; some local organizations decided to transition from census outreach to engaging on local redistricting as a continuation of their work for fair local representation.

Local jurisdictions also took steps to make participation in the local redistricting process easier this cycle. The FMA provided new, robust opportunities and tools for the public to participate, including a requirement that jurisdictions hold at least four public hearings before adopting final maps and that jurisdictions make a “good faith” effort at informing the public, with an emphasis on reaching underrepresented and non-English-speaking communities. Many jurisdictions embraced the FMA’s goals and took tangible efforts to go beyond the law’s baseline requirements for engaging their communities. Public participation was made even easier in those jurisdictions that, due to the COVID-19 pandemic, allowed the public to testify at hearings remotely. Finally, some jurisdictions established independent redistricting commissions, which created a dedicated forum just for redistricting. As discussed in Section 5, independent commissions generally led to significantly higher public participation because they offered more hearings and the public and community groups had more confidence that their testimony would be incorporated into new maps than if elected officials were drawing their own lines.

113 In a survey of organizational stakeholders, of those that observed the 2010 and 2020 redistricting cycle, a majority felt that overall public participation significantly or somewhat increased, and none felt it had decreased. Organizational Stakeholder Local Redistricting Survey (2022).

114 Organizational Stakeholder Local Redistricting Survey (2022), comment by Angélica Salceda with the ACLU of Northern California.

115 Author interview, Steven Ochoa with MALDEF (Apr. 28, 2022 and May 5, 2022).

Although the overall picture for public participation in the 2020 cycle is positive, some elements of the FMA did not work as well as intended. Some jurisdictions were resistant to redistricting at all and did, at best, the bare legal minimum in terms of number of hearings and outreach required under the FMA. In particular, many jurisdictions made no effort to engage underrepresented communities, or lacked the connections and relationships with those communities to do so effectively. Public participation was often low in such jurisdictions, or only picked up towards the end of the process, when incumbents had largely already settled on the map they were going to adopt. Many organizational stakeholders could not identify what outreach activities, if any, jurisdictions they were monitoring had undertaken to inform their communities about redistricting, nor was this information easily findable on the jurisdiction’s redistricting website. Lack of transparency around the public outreach process made it more difficult for groups to hold local governments accountable for the open-ended “good faith” outreach effort required under the FMA.

More hearings led to more public participation.

Under the FMA, jurisdictions were required to hold a minimum of four public hearings prior to adopting district maps, up from the requirement prior to the FMA’s enactment of only two hearings. At least one hearing or workshop was required before a jurisdiction released its first draft map (“pre-draft map hearings”) and at least two hearings were required after the first draft map was released (“post-draft map hearings”). To make hearings more accessible to working people, the FMA also required that one hearing be held after working hours or on a weekend.¹¹⁶

Most jurisdictions not only met but exceeded the four-hearing minimum; many far exceeded it. In a survey of local League of Women Voters of California chapter volunteers, 36% of respondents said the local jurisdictions they observed held 3-5 public hearings, whereas 55% said their jurisdiction held more than five hearings.¹¹⁷ Inyo County, for example, held nine public hearings and five “town halls” on redistricting, one for each supervisorial district.¹¹⁸ Jurisdictions with advisory or independent redistricting commissions, whose meetings were held independent from the legislative body, held the most hearings. For example, Los Angeles County’s Citizen Redistricting Commission held 56 regular and special meetings and commissioner workshops.¹¹⁹ Many jurisdictions took other steps to broaden public accessibility, like holding multiple after-working hours hearings or hosting meetings in different geographic locations. Stanislaus County, for example, held workshops in the cities of Empire, Oakdale, Patterson, Salida, and Turlock, in addition to the county seat of Modesto.¹²⁰

116 California Elections Code Sections 21507.1, 21607.1, and 21627.1.

117 League of Women Voters of California, “LWV California Local Redistricting Survey Results” (2022).

118 Inyo County, “Recordings of past redistricting hearings,” www.inyocounty.us/redistricting-2021.

119 Los Angeles County Citizens Redistricting Commission, “Final Report” (Dec. 15, 2021), redistricting.lacounty.gov/wp-content/uploads/2021/12/Final_Report_12_15_21.pdf.

120 Stanislaus County, “Redistricting Information,” www.stancounty.com/redistricting/workshops.shtm (accessed Oct. 2022).



Community member speaking before the Santa Barbara Independent Redistricting Commission
(PHOTO CREDIT: CAUSE)

These efforts generally paid off in terms of higher turnout and more draft map submissions. Paul Mitchell, owner of Redistricting Partners, one of the main local redistricting consulting firms this cycle, said that there was “absolutely” more participation in local redistricting this cycle over the prior cycle, which he credited to a number of factors including “more hearings which increased the opportunities for public participation.”¹²¹ Having multiple hearings, especially beyond the four required under the FMA, also provided more opportunity for refining draft maps based on that public feedback. The one to two pre-draft map hearings served an important role in allowing communities to propose draft maps before a local government settled on a preferred map configuration; however, organizational stakeholders reported that in many communities it would take one to two hearings for the public to become aware that redistricting was occurring, and that turnout would generally increase once there were draft maps to react to. It was particularly important for larger jurisdictions to hold more hearings, explained Steven Ochoa, with MALDEF, “because their redistricting is more complicated” and often required balancing the interests of multiple neighborhoods or overlapping communities.¹²²

While most jurisdictions adopted a calendar that provided the public with multiple opportunities to comment, some jurisdictions scheduled only the legal minimum of four hearings. California Common Cause estimated that, of the over 60 jurisdictions that its staff monitored this past cycle, nearly one-third of those jurisdictions held only the minimum number of hearings.¹²³ “Four hearings seems like not enough hearings, especially in jurisdictions with little to no public input,” said Salceda, with the ACLU of Northern California. “By the time people started engaging in the process, the process was over.”¹²⁴ For example, it was arguably legally possible, under the FMA, for a jurisdiction to hold two pre-draft map hearings, then to review draft maps for the first time at the third hearing, and then to adopt one of those draft maps at the fourth hearing.

121 Author email interview, Paul Mitchell with Redistricting Partners (Dec. 1, 2022).

122 Author interview, Steven Ochoa with MALDEF (Apr. 28, 2022 and May 5, 2022).

123 California Common Cause, Internal Staff Memo on Local Redistricting Observations (Jan. 12, 2022).

124 Organizational Stakeholder Local Redistricting Survey (2022), comment by Angélica Salceda with the ACLU of Northern California.

Because draft maps cannot be changed on the day of adoption, a jurisdiction committed to holding only four hearings would have, in practice, provided only one hearing at which the public could have requested changes to draft maps. In reviewing public hearing scheduling during the 2020 redistricting cycle, Common Cause staff observed that many jurisdictions appeared “eager to hold only the bare minimum number of hearings as a means of limiting public participation and comment” so that they could re-adopt their current district boundaries.¹²⁵

Consolidated hearings were the norm in legislative redistricting.

When city councils or county boards of supervisors managed their own redistricting process, public hearings were nearly always consolidated with regularly-scheduled meetings of the council or board, rather than held as standalone hearings. In such cases, the FMA required that the hearing start at a fixed time, regardless of the hearing’s order on the agenda, so that commenters would not have to wait potentially hours for other meeting agenda items to conclude before testifying.¹²⁶ Several organizational stakeholders credited this requirement as boosting participation. “Time-certain hearings helped with engagement and prevented redistricting from getting buried in some agenda when you don’t know when it will be taken up,” said Lucas Zucker, Policy and Communications Director with CAUSE.¹²⁷

Consolidated hearings save jurisdictions time and money over holding standalone hearings, and can sometimes help public participation if a community group that was already attending a council or board meeting for a different item decides to also participate in the redistricting hearing. However, even with set-time hearings, some organizational stakeholders reported feeling that elected officials were rushing the hearings to get to some later agenda item they felt was more important. A minority of jurisdictions even limited the total amount of time which would be allowed for public testimony. The City of Bakersfield, for example, initially capped public testimony to a total of just 15 minutes, but backed down for future hearings after receiving a joint letter from the ACLU of Southern California, Common Cause, and Dolores Huerta Foundation strongly criticizing the practice. “Not only will maintaining the limit artificially and unnecessarily limit participation in a once-in-a-decade process,” the organizations wrote, “it will also make the public feel that the council is minimizing the importance of the public’s voice and thus undermine trust in the redistricting process.”¹²⁸

Remote participation provided more equitable access to the local redistricting process.

The COVID-19 pandemic had a very disruptive effect on the 2020 redistricting cycle, not only because it led to months-long delays in the release of census data, but also because, to avoid catching or spreading the virus, far fewer people were willing to attend in-person meetings. However, a silver lining of the pandemic was that it led many local governments to provide new opportunities for remote participation that otherwise would not have been available. In March of 2020, to limit the virus’s spread, Governor Gavin Newsom issued an executive order authorizing local governments to “make public meetings accessible telephonically or otherwise electronically to all members of the public” and overriding any provision of the “Brown Act expressly or impliedly requiring the physical presence ... of the public as a condition of participation.”¹²⁹

125 California Common Cause, Internal Staff Memo on Local Redistricting Observations (Jan. 12, 2022).

126 California Elections Code Sections 21507.1(d), 21607.1(d), and 21627.1(d).

127 Author interview, Lucas Zucker with CAUSE (May 19, 2022).

128 Letter from Jonathan Mehta Stein with California Common Cause, Julia Gomez with ACLU of Southern California, and Camila Chavez with Dolores Huerta Foundation to Bakersfield City Council, “Re: Bakersfield City Council Ward Redistricting” (Sep. 14, 2021).

129 Governor Newsom, Executive Order No. N-25-20, ¶ 11 (Mar. 12, 2020); revised by Executive Order No. N-29-20, ¶ 3 (Mar. 17, 2020); revised by Executive Order No. N-35-20, ¶ 2 (Mar. 21, 2020).

The Legislature later passed a bill extending local governments' streamlined ability to meet and take public comment remotely during a declared state or local emergency through the end of 2023.¹³⁰

During the height of the pandemic, cities overwhelmingly shifted to holding remote meetings. According to a September 2020 California Common Cause survey of 115 cities, 84% of cities required that public comment be provided remotely, generally either by video or phone, compared with only 16% of cities that still had in-person public comment.¹³¹ As the local redistricting cycle began in 2021, many jurisdictions, like the City of Sacramento, retained remote-only public comment, whereas other jurisdictions, like the County of Sacramento, allowed for both in-person and phone or video public comment.¹³² However, some jurisdictions, like San Bernardino County, returned to only allowing in-person testimony during the redistricting process.¹³³

Remote participation, in the jurisdictions that allowed it, significantly opened up the redistricting process to more Californians, and was very popular with the public. For example, San Diego County received three times more virtual than in-person testimony at its pre-draft map hearings, and ten times more virtual than in-person testimony at its post-draft map hearings.¹³⁴ Providing remote participation options, in particular through web-based platforms, like Zoom, increased participation and was especially helpful for “people coming back from work or who have kids at home,” said redistricting consultant Karin Mac Donald, the owner of Q2 Data & Research, a consulting firm that assisted jurisdictions with line-drawing.¹³⁵ Doug Johnson, the President of NDC Consulting, one of the largest local redistricting consulting firms in California, observed that the “diversity of people able to participate was much, much better” with remote testimony.¹³⁶ “It wasn’t just the same gadflies testifying,” he remarked.

Conversely, Mac Donald, the demographer with Q2, found that jurisdictions that “were adamant about only allowing in-person participation depressed turnout.” Many organizational stakeholders echoed these sentiments. The Partnership for the Advancement of New Americans (PANA), which advocates for Black, African, Middle Eastern, Muslim, and South Asian (BAMEMSA) refugee and immigrant communities in the San Diego region, wrote in its final report on the 2020 redistricting cycle that “it was challenging to turn community out to participate in person. Marginalized communities face significant barriers to getting to meetings - lack of transportation, lack of flexibility with work schedules, and inability to attend evening meetings due to family obligations. The pandemic added another barrier because many were uncomfortable attending indoor meetings.”¹³⁷ Local government meetings, which are generally held only at a city hall or a county administration building, can also be physically inaccessible to people with disabilities, or for people who live in geographically large jurisdictions where travel time is a barrier. In San Bernardino County, for example, it would take about three hours to drive from Needles, a city in the eastern part of the county, to the county seat in the City of San Bernardino.

130 AB 361 (Rivas), Chapter 165, Statutes of 2021, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220AB361](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220AB361).

131 California Common Cause, unpublished research (September 2020).

132 See, e.g., Sacramento Independent Redistricting Commission, Agenda (Dec. 1, 2021), sacramento.granicus.com/GeneratedAgenda-Viewer.php?view_id=64&clip_id=5129 and Sacramento County, “Redistricting 2021 PUBLIC MEETINGS / HEARINGS,” [redistricting2021.sacounty.gov/Pages/Meetings-Hearings.aspx](https://sacounty.gov/Pages/Meetings-Hearings.aspx) (accessed August 2022).

133 San Bernardino County, “Redistricting 2021 Agendas/Minutes,” sbcountyredistricting.com/agendas-minutes/ (accessed August 2022).

134 Asian Business Association San Diego, “ABASD Summary of DMPHs and Success Metrics” (Dec. 2021) (outreach summary report to the San Diego Independent Redistricting Commission), www.sandiegocounty.gov/content/dam/sdc/redistricting/docs/ircmeetings/irc-meeting-12-14-21/IRC%20Final%20Report%20-%20Appendices%20v5%20-%20amended.pdf.

135 Author interview, Karin Mac Donald with Q2 Data and Research (Jul. 7, 2022).

136 Author interview, Doug Johnson with Nation Demographics Corporation (Oct. 21, 2022).

137 Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022), www.panasd.org/mapping-our-future.

While organizational stakeholders praised the use of remote testimony for its potential to expand access, some noted that, without robust outreach to underrepresented communities, commenters from overrepresented communities remained the most likely to use this option. Maintaining in-person hearing options in future redistricting cycles is also important, they noted, because some residents may be uncomfortable testifying remotely, or may face technological barriers to doing so. In its final report on the redistricting process, Oakland’s Independent Redistricting Commission found that “the fact that most meetings and communications were virtual left out tens of thousands of Oakland residents, especially those who are most impacted by poverty and lack of high-quality city services and infrastructure.”¹³⁸

Local governments had a mixed record of reaching out to the public and especially underrepresented or historically disenfranchised communities.

Depending on where they were active, organizational stakeholders had very different views as to how much of a “good faith” effort jurisdictions made at engaging in redistricting public education and outreach, particularly to underrepresented communities, and how effective this outreach was. In some regions, organizational stakeholders reported seeing excellent or good community outreach, whereas in others stakeholders described jurisdictions’ outreach as poor or nearly non-existent. For example, Petra Siltan, the Senior Director of Programs for Thrive Alliance, felt that San Mateo County “put a lot of effort in getting people to participate.”¹³⁹ Similarly, Richard Konda, Executive Director of the Asian Law Alliance, felt that most Silicon Valley jurisdictions seemed to “take the [outreach] process seriously.”¹⁴⁰

On the other hand, other jurisdictions made little effort to encourage participation from underrepresented communities. In the Central Valley, Strategic Engagement Director with Communities for a New California Hatzune Aguilar’s “overall impression across the board was that the jurisdictions did the bare minimum [in terms of community engagement; they] just checked-the boxes, often at the last minute. It wasn’t an engagement process that was going to reach everyone, and particularly the groups that most needed to be heard in the process.”¹⁴¹ In a couple jurisdictions, stakeholders reported a redistricting process that felt unwelcoming of and sometimes hostile to participation from people of color or groups that advocate on their behalf, who were sometimes met with racist taunts, harassment, and intimidation by other public commenters.¹⁴²

Many jurisdictions engaged in extensive and sometimes innovative community outreach practices.

The striking difference in observed levels of outreach across jurisdictions reflects, in part, the fact that the FMA does not precisely define what constitutes a “good faith” effort at community education. Other than a basic requirement that jurisdictions share redistricting information with local media, including media serving a non-English speaking audience, and with good government, civil rights, civic engagement, and community groups, the FMA leaves it to each jurisdiction to determine how best to educate their communities.¹⁴³ Many jurisdictions embraced this openness. “Providing cities flexibility in how to do additional outreach beyond

138 Oakland Independent Redistricting Commission, “Independent Redistricting Report” (Oct. 2022), cao-94612.s3.amazonaws.com/documents/Charter-Report-TOC-DRAFT-100-DM-SG-LG-MH-BA-MV.pdf.

139 Author interview, Petra Siltan with Thrive Alliance (May 11, 2022).

140 Author interview, Richard Konda Asian Law Alliance (Apr. 28, 2022).

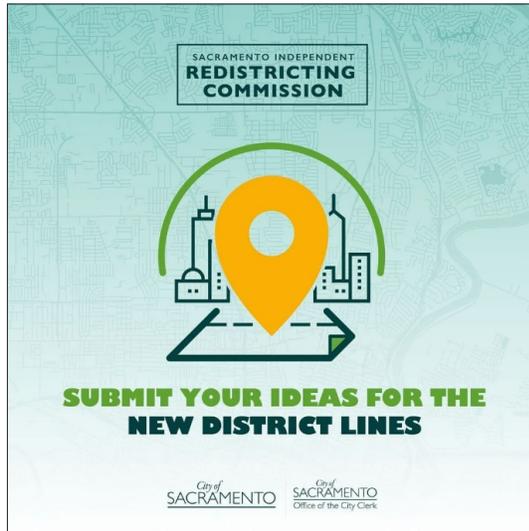
141 Author interview, Hatzune Aguilar with Communities for a New California (Jul. 1, 2022).

142 Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022) and Catherine Hazelton, “Funding Redistricting In California: An Analysis of Philanthropy California’s Fair Representation Fund,” (Nov 2022), <https://socialgrantmakers.app.box.com/s/kzneb0qml4c2war5aevjx8oal2jbfj9g> (nonprofits working to mobilize diverse communities in California state and local redistricting “complained about blatant racism and taunts from other activists their community members faced when testifying”).

143 California Elections Code Sections 21508(a), 21608(a), and 21628(a).



San Diego County:
Flyer - Arabic



City of Sacramento:
Social Media Post



Tulare County:
Informational Video - Spanish



City of Los Angeles:
Graphic

publication requirements was a good thing,” said Temecula Clerk Johl, with the City Clerks Association, and “it gave cities an opportunity to get creative in terms of how they would reach their communities.”¹⁴⁴ According to Doug Johnson, the President of NDC, more jurisdictions hired specialized public outreach firms to assist with this task than in prior cycles “both out of a sense of wanting greater participation, and because of the FMA” outreach requirements.¹⁴⁵

Some of the outreach strategies jurisdictions employed this cycle included:

- Long Beach purchased newspaper, billboard, and bus shelter ads to increase the public’s awareness of redistricting;¹⁴⁶
- San Joaquin County used utility bill inserts to notify residents about upcoming redistricting workshops;¹⁴⁷

144 Author interview, Temecula City Clerk Randi Johl (Sep. 12, 2022).

145 Author interview, Doug Johnson with Nation Demographics Corporation (Oct. 21, 2022).

146 Memo from Kevin Jackson, Long Beach Deputy City Manager, to the Long Beach Independent Redistricting Commission, “Engagement Plan Update” (May 18, 2021), longbeach.legistar.com/View.ashx?M=F&ID=9415932&GUID=80F7CED0-81D6-42B0-94E5-B41D5689BCC8.

147 San Joaquin County, “Communications,” wedrawthelines.sjgov.org/communications.aspx (accessed Oct. 2022).

- Martinez sent a mailer to all city households, placed a billboard ad on the Benicia bridge, and posted flyers in libraries, grocery stores, and other public places.¹⁴⁸
- The City of Sacramento produced a “Community Leader Toolkit” with flyers, social media graphics, informational videos, powerpoint decks, and sample email or newsletter content that organizations and neighborhood groups could use to inform their communities about redistricting. The City also made small grants of \$250 to \$5,000 to more than 40 community organizations, neighborhood associations, and local social media influencers to promote the redistricting process.¹⁴⁹
- In Temecula, city staff made presentations about redistricting to all of the city’s appointed boards and commissions, and asked members of those commissions to share this information with their own networks. The city also partnered with the school district to notify parents about the city’s upcoming redistricting process.¹⁵⁰
- Sunnyvale adopted an outreach plan which included hosting redistricting “pop-up” events to solicit public feedback on the draft maps under consideration at libraries, farmer’s markets, senior centers, mobile home parks, and places of worship in hard-to-reach communities.¹⁵¹
- San Diego County hired an outreach contractor to encourage public participation in the redistricting process, with a focus on engaging “hard-to-reach communities of the County, including those in rural, unincorporated areas and those historically under-represented in civic engagement.”¹⁵²

Dozens of jurisdictions also provided residents with a free, online mapping tool that they could use to submit the boundaries of their community of interest or to submit full city council or board of supervisor district maps. Academic institutions and nonprofits also created free mapping tools for dozens of California jurisdictions. For example DistrictR, a mapping program designed by Tufts University, allowed users to create full district maps using 2020 data for 30 of California’s 58 counties and 71 cities.¹⁵³ In DistrictR, residents could form districts by selecting census blocks, and the program would indicate whether the districts meet equal population requirements and also provide select demographic data for each district. Jurisdictions “with easy online mapping tools” like DistrictR led to “way more maps, and higher quality maps and input” in the local process, said Zucker with CAUSE.¹⁵⁴ Long Beach, for example, which offered a public online mapping tool, received 90 community of interest map submissions and 110 partial and full city council district maps.¹⁵⁵

148 Martinez City Council Meeting, Martinez Independent Redistricting Commission Presentation on Agenda Item 12 (Apr. 6, 2022, at 1:33), martinez.granicus.com/player/clip/1810?view_id=7&redirect=true.

149 Sacramento Independent Redistricting Commission, “2021 Redistricting Final Report” (Jan. 24, 2022), sacramento.granicus.com/MetaViewer.php?view_id=64&clip_id=5157&meta_id=663293 and City of Sacramento, “See how these community groups are supporting the city’s redistricting efforts” (Aug. 11, 2021), sacramentocityexpress.com/2021/08/11/see-how-these-community-groups-are-supporting-the-citys-redistricting-efforts/.

150 Author interview, Temecula City Clerk Randi Johl (Sep. 12, 2022).

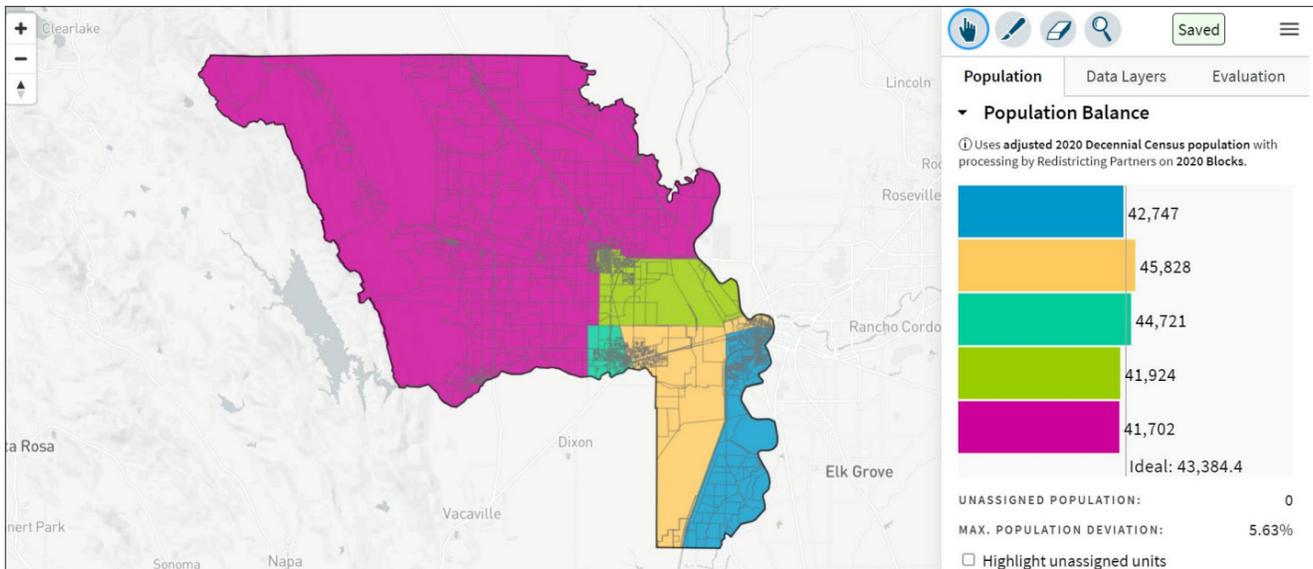
151 City of Sunnyvale, “Council Election Redistricting Community Outreach Plan” (May 4, 2021), www.sunnyvale.ca.gov/home/showpublisheddocument/2346/637822465026530000.

152 San Diego Independent Redistricting Commission, “Final Report” (Updated Jan. 12, 2022), www.sandiegocounty.gov/content/dam/sdc/redistricting/docs/ircmeetings/irc-meeting-01-26-22/County%20of%20San%20Diego%202021%20IRC%20Final%20Plan%20Amended%2020220126.pdf.

153 DistrictR, “California,” districtr.org/california (accessed Oct. 2022).

154 Organizational Stakeholder Local Redistricting Survey (2022), comment by Lucas Zucker with CAUSE.

155 Long Beach Independent Redistricting Commission, “Report and Recommendations” (Jan. 2022), www.longbeach.legistar.com/View.ashx?M=F&ID=10381159&GUID=BC1B46C1-7CD1-41D9-AA89-CA076896725E.



A Yolo County supervisorial districts draft map created using DistrictR submitted by the Yocha Dehe Wintun Nation (Oct. 30, 2021).

Other jurisdictions did the bare minimum.

While many jurisdictions invested significant time and resources into promoting public participation, many others did not. “With the possible exception of Tulare County, in the Central Valley there was generally zero commitment to doing legitimate outreach,” said Lori Pesante, Civic Engagement Director with the Dolores Huerta Foundation. Despite the FMA’s requirements for outreach, she added, “if the jurisdiction doesn’t really want strong public participation to begin with, they succeed.”¹⁵⁶ Several organizational stakeholders were unaware of the local governments whose redistricting they were tracking having engaged in any outreach, other than posting to their social media accounts. The FMA required jurisdictions to provide redistricting information through community and civil rights groups, but many stakeholder organizations, who are engaged with diverse communities in these jurisdictions, were not contacted. For example, Sky Allen, the Executive Director of Inland Empire United, a table of community organizations active in San Bernardino and Riverside Counties, reported that “local governments never reached out to us for their local redistricting outreach.”¹⁵⁷ Stakeholders in these areas felt the open-endedness of the FMA’s outreach provisions was a liability that needed to be strengthened: “Just posting on a website that a hearing is happening should not be enough,” said Allen. “Having more details and teeth on how local governments must do outreach would help.”

In some jurisdictions, elected officials made clear that they intended to re-adopt their existing maps with no changes, which discouraged people from advocating for different lines. In El Cajon and Garden Grove, city officials contemplated skipping redistricting altogether, but reversed course in the face of public criticism and legal threats.¹⁵⁸ In several jurisdictions elected officials announced, early on in the process before the benefit of substantial public comment, that the existing lines were fine or preferable to any changes. In El

¹⁵⁶ Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

¹⁵⁷ Author interview, Sky Allen with Inland Empire United (May 6, 2022).

¹⁵⁸ Brandon Pho, “Garden Grove Officials’ Push to Skip Redistricting Altogether Jolts Alarm in City Spanning Little Saigon,” *Voice of OC* (Nov. 10, 2021), <https://voiceofoc.org/2021/11/garden-grove-officials-push-to-skip-redistricting-altogether-jolts-alarm-in-city-spanning-little-saigon/> and Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022).

Cajon, for example, a report by PANA noted that a majority of “the City Council made clear that they were not going to change existing district lines, which discouraged public participation.”¹⁵⁹

Community-based organizations were generally the best messengers for reaching diverse communities, but often lacked the resources to fully engage in the redistricting process.

Even for jurisdictions committed to doing robust outreach, several organizational stakeholders noted that local governments often struggled to engage diverse communities, especially communities with limited English proficiency and communities without a prior history of working with county or city staff on local projects. For example, Aaron Robertson, the Director of Political Voice at Catalyst California (formerly Advancement Project California) felt that “there was intent and desire to share information and to authentically want to hear from a variety of communities, including those that are more frequently disenfranchised in the redistricting process” in Los Angeles County, but that “government is often just not the best messenger to” engage these communities.¹⁶⁰ To Julia Marks, formerly the Voting Rights Program Manager and Staff Attorney for Asian Americans Advancing Justice - Asian Law Caucus, one of the lessons of the 2020 cycle was that “city- and county-led outreach is not effective at reaching diverse communities without strong local partnerships with community leaders and organizations.” She explained that “it is extremely difficult to engage people in redistricting and is more successful if you have pre-existing relationships.”¹⁶¹ Some jurisdictions attempted to address this by hiring outreach consultants with direct experience working with underrepresented communities in that jurisdiction. Tulare County, for example, which was described by some organizational stakeholders as having done better redistricting outreach than most other counties in the Central Valley, hired a consultant with deep roots in the region, including working with farmworker communities.¹⁶²

Generally, diverse turnout from underrepresented communities at public hearings, where it occurred, came as a result of community organizing by locally-based nonprofits. “It often falls back on community-based organizations [CBOs] to track and follow the process [of local redistricting], and share the information back to the population that they work with, with the CBO being the trusted messenger,” said Robertson, with Catalyst California. Marks, with Asian Law Caucus, agreed. “Public participation was better and more diverse when community based organizations had capacity to educate and engage the public,” she said.¹⁶³

Some jurisdictions, like the City of Sacramento, offered small grants to local organizations to do redistricting education and outreach to underrepresented communities, but this was rare overall. A recurring theme of the 2020 cycle was how few resources were available for community organizations to engage in local redistricting. Many groups that primarily organize in communities of color or communities with limited English proficiency worked on local redistricting because of its importance to local fair representation, but could only devote limited resources to the task because the work was unfunded. Local redistricting can be especially logistically difficult to engage on because multiple local governments in a region will be redistricting

159 Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022).

160 Author interview, Aaron Robertson with Catalyst California (May 10, 2022).

161 Author interview, Julia Marks with Asian Law Caucus (Apr. 15, 2022).

162 See Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022) (“Tulare is an exception [when it comes to county outreach efforts] and did a good job. They hired a good local person to do the outreach; she was at meetings all over the county.”); Tulare County 2021 Advisory Commission on Supervisorial Redistricting, “Final Report” (Oct. 21, 2021), [tularecounty.ca.gov/redistricting/commission/2021-commission-final-report/](https://www.tularecounty.ca.gov/redistricting/commission/2021-commission-final-report/) (“[T]he County contracted Lali Moheno & Associates (Outreach Consultants) to provide community outreach services throughout the redistricting process. ... It was frequently noted that Tulare County had devised the most inclusive and informative outreach process among its peers.”); and Kaitlin Washburn, “Lali Moheno champions women farm workers’ wellness, rights,” *Sun Gazette* (Oct. 30, 2019), [thesungazette.com/article/news/2019/10/30/lali-moheno-champions-women-farm-workers-wellness-rights/](https://www.thesungazette.com/article/news/2019/10/30/lali-moheno-champions-women-farm-workers-wellness-rights/)

163 Organizational Stakeholder Local Redistricting Survey (2022), comment by Julia Marks with Asian Law Caucus.

at the same time. Nancy Xiong, Executive Director of Hmong Innovating Politics, wished she had had more resources to work on redistricting: “What we really needed was a person fully dedicated to redistricting for a full year to pivot from census to support redistricting. And we just didn’t have that capacity. So we did what we could.”¹⁶⁴ Konda, with Asian Law Alliance, echoed that sentiment: “It would be helpful to have foundation support to enable groups to staff up for local redistricting; that would enable groups like ours to be more effective in this process.”¹⁶⁵

A funders report reached similar conclusions. This cycle, five philanthropies pooled \$2.5 million to support community-based organizations doing primarily state-level redistricting outreach to underrepresented communities; a debrief report commissioned by the funders found that this outreach increased engagement with the state process and led to better maps, but noted for future cycles that “more funding for municipal redistricting processes is needed. Grantees are eager to increase their impact by leveraging expertise, data, and maps from the state process in local jurisdictions.”¹⁶⁶

Recommendations

→ **Recommendation 3.1: Increase the minimum number of FMA hearings and workshops from four to a minimum of six to ten, depending on the size of the jurisdiction.**

The FMA should be amended to increase the number of redistricting public hearings. Under current law, jurisdictions are only required to hold two post-draft map hearings. This provides only a narrow window for the public and community groups to vet and request changes to the draft maps under consideration. This is especially true for larger jurisdictions, where the task of balancing the interests of different neighborhoods, communities, and cities is more complicated and will require more meetings. The FMA should require, as a baseline, that jurisdictions hold two pre-draft map hearings (or workshops) and four post-draft map hearings to vet and refine proposals, for a total of six public meetings. Larger jurisdictions, depending on their size, should be required to hold 6-8 post-draft map hearings in addition to the two pre-draft hearings, for a total of 8 to 10 hearings. Most jurisdictions already held more hearings than the FMA minimum this cycle and would not have been affected by this change; however, for those jurisdictions intent on doing the legal minimum, adding additional post-draft map hearings will promote greater public participation and a more deliberative redistricting process in future cycles.

Jurisdictions should also adopt other public hearing best practices, such as holding meetings in different locations to improve accessibility; holding more meetings after-business hours (instead of just one meeting) to make it easier for working people to participate; and holding at least some standalone hearings devoted only to redistricting so that other agenda items are not in competition for decision-makers’ time or attention. Finally, the FMA should be amended to prohibit local governments from placing a cap of less than two hours for public testimony at a redistricting public hearing — hearings must allow a reasonable amount of time for the public to be heard.

→ **Recommendation 3.2: Require that jurisdictions provide in-person and remote options for providing live testimony at public hearings.**

164 Author interview, Nancy Xiong with Hmong Innovating Politics (Jun. 22, 2022).

165 Author interview, Richard Konda Asian Law Alliance (Apr. 28, 2022).

166 Catherine Hazelton, “Funding Redistricting In California: An Analysis of Philanthropy California’s Fair Representation Fund,” (Nov. 2022), socialgrantmakers.app.box.com/s/kzneb0qml4c2war5aevjx8oal2jbfj9g.

In the 2020 cycle, remote testimony substantially increased the number of people who could participate in the local redistricting process. It also made the process more equitable, as people with family or work obligations, or facing transportation barriers, were more readily able to participate. However, not all jurisdictions provided this option during this cycle and, as jurisdictions return to pre-pandemic meeting procedures, many jurisdictions are eliminating the option to participate in public meetings remotely. To facilitate broad and diverse participation in the local redistricting process, the FMA should be amended to ensure that all redistricting public hearings allow for remote testimony, in addition to in-person testimony, going forward.

Local jurisdictions of all sizes successfully provided remote testimony options in the 2020 cycle — typically by phone or using online platforms, like Zoom. By the next redistricting cycle, there is every reason to believe that remote meeting technology will be better, cheaper, and more accessible. Even so, in-person testimony options must be retained, too, because some people are more comfortable testifying in this format and because requiring only remote participation could erect new barriers (like access to high-speed internet) to public participation.

→ **Recommendation 3.3: Require that jurisdictions adopt a redistricting outreach and education plan after receiving community input.**

While many jurisdictions adopted robust education and outreach strategies this cycle, others did very little, and may have even violated the FMA’s requirement of a good faith effort at outreach. Jurisdictions should have the flexibility to choose the outreach strategies that will be most effective at reaching their diverse communities; however, to ensure jurisdictions are accountable for actually conducting outreach, and to increase the likelihood that these strategies will be successful in reaching all communities, including communities with limited English proficiency, jurisdictions should be required to submit for public review and then to adopt an education and outreach plan in 2030, before census data has been released. The plan should include a description of how the jurisdiction plans to reach the public using advertising, mailers, or in-person contacts, when and where it expects to hold hearings, and what specific actions the jurisdiction will take to reach underrepresented communities and communities with limited English proficiency.

This approach is similar to what California law already requires when a county opts-in to the Voter’s Choice Act (VCA), which is a law that permits a county to conduct its elections using countywide vote centers instead of neighborhood polling sites. Under the VCA, counties must publish a voter education and outreach plan which explains how they will educate their voters about the voting system change, including a description of what strategies will be used to educate language minority communities.¹⁶⁷ A draft plan must be published in advance with opportunity for the public to comment before it is adopted by the county then submitted to the Secretary of State for approval.

Requiring local jurisdictions to adopt a similar outreach and education plan for redistricting would encourage jurisdictions to take their outreach responsibilities more seriously and would ensure any education strategy is deliberate and not done in an *ad hoc* fashion. Moreover, by publishing a draft plan in advance and soliciting public feedback, groups with particular expertise in reaching underrepresented communities or those with limited English proficiency can recommend improvements before the plan is implemented. Finally, a more structured public education process will also provide more predictability for community organizations to engage with and supplement the jurisdiction’s outreach activities.

167 California Elections Code Section 4005(a).

→ **Recommendation 3.4: Fund community-based organizations to engage underrepresented communities in the local redistricting process.**

Local redistricting helps to determine community representation for the next ten years. As a result, it is important that underrepresented communities, and communities that due to language barriers or past discrimination may be disengaged from local government, be active participants in this process. However, this past cycle has shown that local governments are often not the best messengers to reach these communities. Philanthropic foundations concerned with fair representation, and potentially the state and local governments as well,¹⁶⁸ should provide grant support to community-based organizations to do targeted redistricting education and outreach to such communities.

Ideally, this should be a multi-year commitment where organizations are funded first to do census outreach and second to encourage participation in state and local redistricting. As one 2022 redistricting cycle funder’s report noted, because of “intersecting participants, strategies, and timing, it might be more efficient and seamless for a single pooled fund to support both Census and redistricting activities.”¹⁶⁹

Multi-year funding could also help keep together valuable outreach coalitions that formed to encourage hard-to-count populations to participate in the census. Sara Lamnin, a Hayward Councilmember and member of the Alameda County Coalition for Fair Redistricting, said that the Alameda County had an excellent process for census outreach that had engaged multiple community partners and volunteers but that this network mostly dissolved after the census concluded. “What I would have liked to have seen was that, when they were doing a full press on public engagement around census, they should have rolled the redistricting education into that,” she said. Instead, “once census was done, the community tried to rebuild that coalition and engagement [around local redistricting], but it was never rebuilt to the degree it had been for census.”¹⁷⁰ Census naturally leads into redistricting, and linking the two processes could also produce earlier, more integrated, and more effective public education around local redistricting.

→ **Recommendation 3.5: Create a statewide public mapping tool for local redistricting.**

Decades ago, redistricting was done using paper maps and by consulting spreadsheets of census block data. Today, redistricting is done entirely electronically, which has given rise to free, online mapping tools for use by the public. Online mapping tools democratize the redistricting process: instead of just jurisdiction-hired demographers or large organizations, now any resident or neighborhood group can draw and submit their own population-balanced map.

However, while widespread, online mapping tools were not universally available for every city and county in California. Moreover, the number of different mapping softwares out there — including DistrictR, Dave’s Redistricting App, Maptitude’s Online Redistricting — meant that if members of the public or organizations wanted to submit maps to different local jurisdictions they might have to learn multiple programs to do so. In addition, sometimes these mapping tools did not incorporate the correct data — California local redistricting uses *adjusted* census data that counts incarcerated persons at their

168 Several local governments, like the City of Sacramento, funded community groups to do redistricting education to diverse communities. The State did not, but spent \$187 million in the 2020 cycle on census education and outreach, including allocating more than \$50 million to community-based organizations for outreach to hard-to-count populations. See California Census 2020, “Outreach and Communication Campaign Final Report” (Apr. 2021), [census.ca.gov/wp-content/uploads/sites/4/2021/04/California-Census-2020-Outreach-and-Communication-Campaign-Final-Report.pdf?emrc=18028c](https://www.census.ca.gov/wp-content/uploads/sites/4/2021/04/California-Census-2020-Outreach-and-Communication-Campaign-Final-Report.pdf?emrc=18028c).

169 Catherine Hazelton, “Funding Redistricting In California: An Analysis of Philanthropy California’s Fair Representation Fund,” (Nov. 2022).

170 Author interview, Sara Lamnin with Alameda County Coalition for Fair Redistricting (May 25, 2022).

pre-incarceration residence — so community-created maps might violate equal population requirements when re-drawn with the correct dataset.¹⁷¹

To avoid mapping tools being available only in some jurisdictions and not others, and to avoid data inconsistencies, the State should establish a single free, online, user-friendly mapping tool, using the correct state data, which could be used by the public to submit maps in all city and county redistricting processes in the State. This tool could be created by the Statewide Database at UC Berkeley Law School, which is responsible for creating California’s official redistricting dataset, or the State could contract with a vendor or an academic nonprofit, like Tufts University’s DistrictR project, to provide this service. While developing a statewide tool would be a complex, multi-year project, it would also likely be far cheaper than if every local jurisdiction individually contracted to provide such a service.



4. CRITERIA

Better redistricting criteria sometimes led to better maps, but incumbency-protection remains the primary obstacle to fairer community representation.

The purpose of the FMA was to create fair representation for all communities in a jurisdiction, and especially for historically marginalized and underrepresented communities. In some jurisdictions, the FMA criteria appear to have worked as intended: elected officials, responsive to community input, made conscious choices to keep whole neighborhoods and communities that had been split in a prior districting or redistricting. However, in a significant number of jurisdictions, the board of supervisors or city council ended up adopting a “status quo” or “minimal changes” map, where district boundaries were adjusted to the bare minimum necessary to meet federal equal population requirements. Status quo maps preserve the base of power that elected line-drawing incumbents, but also entrench prior neighborhood and communities of interest splits, a legacy the FMA was intended to reverse.

Incumbency-protection was not an enumerated redistricting criterion under the FMA; however, just about every advocate and demographer interviewed for this report agreed it was an important consideration in nearly all legislatively-controlled redistricting, and in many instances the most important factor guiding line-drawing, contravening both the letter and spirit of the FMA. Unless the opportunities for incumbency protection gerrymandering are limited or eliminated, we are likely to see the FMA and its promise of fairer community representation continue to be undermined.

2020 Cycle Overview: Some improvement, but incumbency-protection predominated.

Under the FMA, districts should, as much as possible, attempt to organically represent the different communities that make up a jurisdiction, so that as many voices as possible can be represented in the local policymaking process. Assemblymember Bonta, the author of the FMA, explained that the law “would establish mandatory, ranked redistricting criteria, modeled off the State redistricting criteria, so that keeping communities intact is actually prioritized.”¹⁷² Indeed, the top-ranked criterion of the FMA, after the fairly cut-and-dry requirement of contiguity (i.e., that a district be a single continuous shape), is the preservation of neighborhoods and communities of interest. The FMA’s extensive transparency and community outreach requirements, which place a particular emphasis on reaching “underrepresented communities and non-En-

171 Author interview, Steven Ochoa with MALDEF (Apr. 28, 2022 and May 5, 2022).

172 Assembly Local Government Committee, Analysis of AB 849 (Bonta) (Apr. 23, 2019), [leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB849](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB849).

glish speaking communities,¹⁷³ were designed to support this goal, by making it more likely that diverse and overlooked communities will be identified, kept whole, and combined into a single district with other similarly-situated neighborhoods and communities.

The general consensus of the nearly two-dozen civic and voting rights organizations consulted for this report is that, overall, the FMA resulted in somewhat better maps, but that in many if not most jurisdictions, these maps fell short of the law's goal of significantly improving community representation at the district level. In a survey of the staff of 14 voting and civic organizations that participated in local redistricting, only 14% felt that the new local maps were "significantly" better than the maps they replaced; most respondents (57%) felt the maps were only "somewhat" better, whereas 21% felt the new maps were about the same as the old maps. Seven percent of respondents were unsure, and, on a positive note, no respondents thought the new maps were somewhat or significantly worse than the old maps.¹⁷⁴

The problem was not with the redistricting criteria, which organizational stakeholders overwhelmingly supported,¹⁷⁵ but that in many jurisdictions incumbents either disregarded the criteria or only selectively applied them to the extent they would not affect their own electoral prospects. Even where community-empowering maps were adopted, incumbency considerations often remained at play.

CASE STUDY:

Good organizing and good criteria lead to a fairer map in Bakersfield.

The City of Bakersfield's redistricting offers one of the strongest examples of the FMA working mostly as intended, where robust public participation combined with strong criteria led to maps that better reflect the jurisdiction's diverse communities, although incumbency considerations were not entirely absent from the process.

With a population of just over 400,000 residents, Bakersfield is one of the largest cities in the Central Valley. While often perceived by outsiders as a predominantly White and conservative city, that perception does not match the reality of Bakersfield today, which is a majority-Latino city and has slightly more registered Democrats than Republicans.¹⁷⁶ Bakersfield also has significant Black and Asian American populations, including one of the largest Punjabi Sikh communities in the US. Historically this diversity, however, has not been fully reflected on Bakersfield's city council. At the time of the 2022 redistricting, only two of the city's seven councilmembers (i.e., 29% of councilmembers) were Latino, although 51% of residents are Latino, while five councilmembers (i.e., 71%) were White, although only 31% of residents are White.¹⁷⁷ In addition, although there are an estimated 20,000

173 California Elections Code Sections 21508(a), 21608(a), and 21628(a).

174 Organizational Stakeholder Local Redistricting Survey (2022).

175 *Ibid.* Eighty% of respondents "strongly agreed" with the FMA criteria and the remaining 20% "mostly agreed" with the criteria.

176 California Secretary of State, "Report of Registration" (Oct. 24, 2022), www.sos.ca.gov/elections/report-registration/15day-general-2022.

177 United State Census, "QuickFacts: Bakersfield city, California" (Population as of April 1, 2020), www.census.gov/quickfacts/fact/table/bakersfieldcitycalifornia/POPO10220; City of Bakersfield, "City Council," www.bakersfieldcity.us/458/City-Council (accessed Oct. 2022).

to 35,000 Punjabi Sikh residents in Bakersfield,¹⁷⁸ no Punjabi Sikh person had ever been elected to council in the city's history.¹⁷⁹

According to community organizers, these discrepancies in representation were attributable in part to a long history of partisan and racially-discriminatory gerrymandering, which had diluted both the Latino and Punjabi Sikh vote.¹⁸⁰ “The existing map was one of the worst maps we have seen,” said Lori Pesante, with the Dolores Huerta Foundation, which worked on local redistricting in numerous communities across the Central Valley.¹⁸¹ In spite of Bakersfield being majority-Latino, only two council districts had majority Latino citizen voting age populations (CVAP) with the existing map, possibly violating the federal Voting Rights Act.¹⁸² Bakersfield's sizable Punjabi Sikh community was also cracked across several districts, limiting its electoral influence.¹⁸³

As the redistricting cycle began, several councilmembers announced their preference for a “minimal change” map that would have mostly preserved existing council district boundaries, but also seen the Punjabi Sikh community cracked into four districts.¹⁸⁴ In response, a coalition of community and neighborhood organizations, led by the Jakara Movement and Dolores Huerta Foundation, coalesced to develop and propose an alternative “Unity Map” that would reorient council boundaries to better reflect communities of interest. The Unity Map, for the first time, would keep large sections of the Punjabi Sikh community whole as well as the historically Black community in Southwest Bakersfield, while also creating a third Latino-majority district in the downtown area.¹⁸⁵

In past decades, redistricting had been a sleepy affair in Bakersfield. However, “once we started doing outreach, with the Punjabi community, redistricting became a big concern,” said Naindeep Singh, Executive Director of the Jakara Movement.¹⁸⁶ “We saw a level of community outpouring and support that had never been seen before in local redistricting,” he continued. The public hearings were well-attended, especially by Punjabi Sikh and Latino residents, who spoke overwhelmingly in

178 Manpreet Kaur, “Commentary: Bakersfield Needs Landmark To Honor Jaswant Singh Khalra And The Sikh Community,” *Kern Sol News* (Aug. 21, 2019), southkernsol.org/2019/08/21/commentary-bakersfield-needs-landmark-to-honor-jaswant-singh-khalra-and-the-sikh-community/.

179 Robert Price, “Sikhs have no ‘box’ to check except, now, on their November ballots,” *Bakersfield Californian* (Jul. 18, 2022), www.bakersfield.com/columnists/robert-price-sikhs-have-no-box-to-check-except-now-on-their-november-ballots/article_570ed536-ef33-11ec-9ff5-2793c1924748.html.

180 For a historical perspective on past gerrymandering, see Gonzalo Santos, “Community Voices: A great victory for Bakersfield!,” *Bakersfield Californian* (Mar. 21, 2022), www.bakersfield.com/opinion/community-voices/community-voices-a-great-victory-for-bakersfield/article_258d7c48-a6df-11ec-a29e-9379d606918e.html.

181 Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

182 Savannah Welch, “Community responds to new Bakersfield redistricting map drafts,” *KBAK Fox 58* (Jan. 19, 2022), bakersfieldnow.com/news/local/community-responds-to-new-bakersfield-redistricting-map-drafts.

183 Sam Morgen, “Local Punjabis celebrate ‘historic’ City Council vote approving new ward boundaries,” *Bakersfield Californian* (Mar. 26, 2022), bakersfield.com/news/local-punjabis-celebrate-historic-city-council-vote-approving-new-ward-boundaries/article_78dac426-ac95-11ec-b348-cfdc00b872a1.html.

184 Savannah Welch, “Community responds to new Bakersfield redistricting map drafts,” *KBAK Fox 58* (Jan. 19, 2022); Editorial Board, “Our View: Two City Council seats, one county board seat on November ballot,” *Bakersfield Californian* (Oct. 16, 2022), bakersfield.com/opinion/our-view/our-view-two-city-council-seats-one-county-board-seat-on-november-ballot/article_e6deb356-4b37-11ed-88c7-bb37f-9baddb6.html; and Perry Smith, “Bakersfield City Council formally approves unity map,” *Bakersfield Californian* (Apr. 7, 2022), bakersfield.com/news/bakersfield-city-council-formally-approves-unity-map/article_c1449eb4-b6ca-11ec-8d30-2f01af9b0569.html.

185 Perry Smith, “Bakersfield City Council formally approves unity map,” *Bakersfield Californian* (Apr. 7, 2022); David Kaplan, Punjabis, “Sikhs excited over Bakersfield City Council going to next step in redistricting,” *Bakersfield Californian* (Mar. 17, 2022), bakersfieldnow.com/news/local/punjabis-sikhs-excited-over-bakersfield-city-council-going-to-next-step-in-redistricting.

186 Author interview, Naindeep Singh with the Jakara Movement (Sep. 29, 2022).

favor of the Unity Map.¹⁸⁷ With strong support from the public, business community, and local media, the Council, by split vote, ended up approving the Unity Map over the minimal change map.¹⁸⁸ With the new lines, the Sikh community “is going to get to be heard and our needs will be met, so it’s very historic,” said Raji Brar, with the Bakersfield Sikh Women’s Association.¹⁸⁹ In the 2022 elections immediately following the adoption of the new lines, a Punjabi Sikh person was elected to the City Council for the first time.¹⁹⁰



Celebration after a Bakersfield redistricting hearing by Dolores Huerta Foundation staff (Lori Pesante, far left) and Jakara Movement staff and volunteers (including Naindeep Singh, second from right) and Councilmember Eric Arias (far right)

(PHOTO CREDIT: DOLORES HUERTA FOUNDATION)

187 Mythili Gubbi and Muska Olumi, “Punjabi community voices opinions on redistricting map in city council meeting,” *23ABC Bakersfield* (Mar. 16, 2022), turnto23.com/news/local-news/punjabi-community-voices-opinions-on-redistricting-map-in-city-council-meeting; David Kaplan, Punjabis, Sikhs excited over Bakersfield City Council going to next step in redistricting,” *Bakersfield Californian* (Mar. 17, 2022).

188 Perry Smith, “Bakersfield City Council formally approves unity map,” *Bakersfield Californian* (Apr. 7, 2022). Jocelyn Sandusky, “Bakersfield City Council approves ward redistricting map 5B,” *KGET* (Apr. 6, 2022), kget.com/news/local-news/final-public-hearing-regarding-ward-redistricting/.

189 Mythili Gubbi and Muska Olumi, “Punjabi community and other community members celebrate new approved redistricting map,” *23ABC Bakersfield* (Apr. 6, 2022), turnto23.com/news/local-news/punjabi-community-and-other-community-members-celebrate-new-approved-redistricting-map.

190 Robert Price, “Sikh community cheers on Manpreet Kaur at Wednesday’s swearing-in,” *KGET News* (Dec. 14, 2022), kget.com/news/politics/your-local-elections/sikh-community-cheers-on-manpreet-kaur-at-wednesdays-swearing-in/.



Bakersfield City Council redistricting hearing.
(PHOTO CREDIT: CITY OF BAKERSFIELD VIDEO FEED)

The FMA criteria supported the coalition’s advocacy for better community representation, but were not decisive on their own. Indeed, one faction on the council voted instead to adopt the minimal changes map. “I don’t think the FAIR MAPS Act in-and-of-itself led to the victory, but it helped,” said Singh, with the Jakara Movement. “Good policy gives some wind to your back” in pushing for more inclusive maps; that, combined with strong multi-racial organizing and community “engagement and excitement created an opening for the better map to be adopted.”¹⁹¹ Pesante, with the Dolores Huerta Foundation, agreed. She said it was “helpful to have ranked criteria and to have those criteria set in stone.”¹⁹² Ultimately, she explained, adoption of the Unity Map required a number of additional stars to align, including political pressure on the city council from the business community plus a credible threat of litigation under the federal Voting Rights Act had the minimal change map been adopted.¹⁹³

The final version of the Unity Map also did not displace any incumbents from their districts.¹⁹⁴ Community coalitions in other regions also reported that more community-reflective maps were often only considered for adoption where the proposed boundaries did not directly affect incumbents. “We used to just submit the best maps, but they’d get shut down and wouldn’t be considered,” explained Lucas Zucker, with CAUSE. “Now the maps that we draw go for the best representation of the community without pairing any incumbents so that the map will get considered.”¹⁹⁵

191 Author interview, Naindeep Singh of the Jakara Movement (Sep. 29, 2022).

192 Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

193 *Ibid.*

194 *Ibid.*

195 Author interview, Lucas Zucker with CAUSE (May 19, 2022).

Incumbency protection's role in undermining fair representation.

While in Bakersfield redistricting led to more community reflective maps, this was not generally the case in the Central Valley. Despite calls from community organizations to “take into account changing demographics...[,] threats of lawsuits and overwhelming public support in redistricting hearings for community-submitted maps, boards kept districts largely unchanged from the last 30 years” in the San Joaquin Valley, wrote the *Fresno Bee*.¹⁹⁶ Community groups advocating for more representative supervisorial maps “experienced a slap in the face from the supervisors when they ultimately chose a map that had absolutely nothing to do with fair lines and everything to do with them preserving their power,” explained Pesante, with the Dolores Huerta Foundation.¹⁹⁷

In Fresno County, for example, hundreds of community members signed petitions and dozens spoke at the county's public hearings to request a supervisorial district map that would provide more of a voice for the county's rural farmworker communities and better reflect the county's changing demographics.¹⁹⁸ Since 1991, the county's supervisorial districts had changed only slightly, despite significant population and demographic change, including Fresno going from being a majority-White to majority-Latino county. However, in spite of community testimony, a changing county population, and the passage of the FMA criteria intended to better protect community representation, the Board adopted a map that made only minimal changes over the existing lines. Community groups alleged that the map split a long list of the county's largest communities of color: the Latino community, the Black community, the Muslim community, the Hmong community, and the Punjabi community. “The supervisors adopted a map that was essentially the same one as drawn in 1991,” said Common Cause organizer Luis Huerta-Silva. Adding, “you can't blame community members for being cynical.”¹⁹⁹

This experience was not isolated to the Central Valley. Across the state, voting rights and community organizations reported that incumbency protection often took precedence over empowering communities, or determined whether requests for keeping communities whole would be respected or ignored. In a survey of civic and voting rights organizations active in local redistricting in California, 100% agreed that incumbency played a role in the city and county maps that were adopted, with 77% saying that incumbency was prioritized over, or given the same weight as, the ranked criteria.²⁰⁰ “We saw incumbency protection carry the day even over robust community testimony, time and time again,” reported Jonathan Mehta Stein, California Common Cause's Executive Director.²⁰¹ Julia A. Gomez, a staff attorney at the ACLU of Southern California, similarly observed that incumbency consideration often “prevented line-drawers from really taking the [FMA's] substantive requirements to heart. They picked different communities of interest to fit the narrative they wanted,” uplifting testimony identifying communities that supported their interests, but ignoring testimony that did not.²⁰²

196 Juan Esparza Loera, “Fresno supervisors unhappy at losing power to draw district maps,” *Fresno Bee* (Sep. 22, 2022), fresnobee.com/vida-en-el-valle/noticias/california-es/fresno/article266155381.html.

197 Juan Esparza Loera, “Fresno supervisors unhappy at losing power to draw district maps,” *Fresno Bee* (Sep. 22, 2022).

198 Juan Esparza Loera, “Fresno County supervisors are making sure their fiefdoms will continue to flourish,” *Fresno Bee* (Nov. 8, 2021) fresnobee.com/vida-en-el-valle/opinion-es/article255572756.html and Thaddeus Miller, “Fresno County supervisors pick new district map, but opponents say it's still status quo,” *Fresno Bee* (Nov. 16, 2021), fresnobee.com/news/politics-government/article255863141.html.

199 Thaddeus Miller, “Fresno County leaders pick a district map. Opponents call for independent commission,” *Fresno Bee* (Dec. 14, 2021), fresnobee.com/news/politics-government/article256585796.html.

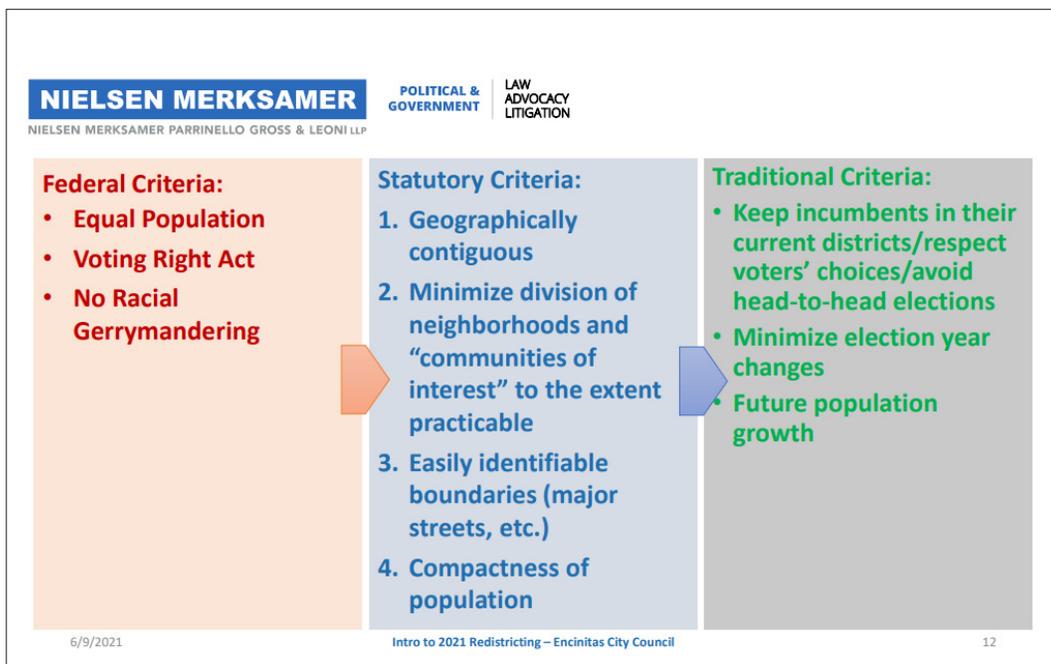
200 Organizational Stakeholder Local Redistricting Survey (2022).

201 Author interview, Jonathan Mehta Stein with California Common Cause (Apr. 13, 2022).

202 Author interview, Julia Gomez with ACLU of Southern California (Apr. 22, 2022).

Protecting the electoral interests of incumbents is not a redistricting criterion under the FMA; however, the FMA does not expressly prohibit this criterion, either.²⁰³ While it is clear that protecting incumbents should not be prioritized above the FMA’s ranked criteria, the Act is silent as to whether or not, after those criteria have been met or ostensibly met, jurisdictions may draw lines to help incumbents or prevent head-to-head contests between incumbents.²⁰⁴ The ambiguous role of incumbency in the FMA criteria was exploited by countless jurisdictions, helping open the door to status quo maps and political gerrymandering.

In the face of the FMA’s silence on this issue, some redistricting consultants advised against using incumbency protection as a criterion,²⁰⁵ while others highlighted it in public presentations (illustrated below) as a “traditional” criterion that could be considered after the enumerated FMA criteria were met. Many jurisdictions openly adopted the latter approach, sometimes euphemistically couching this criterion as “respecting voters’ choices.” For example, the City of Brea’s “FAQ” on redistricting explained to the public that “avoidance of head-to-head contests [between incumbents] is a common criterion ... that a City Council may instruct staff (and/or a consultant) to consider while drafting district boundaries. However, this would be considered secondary to those criteria prescribed by federal and state law.”²⁰⁶



Nielsen Merksamer Presentation to Encinitas City Council (Jun. 9, 2021).

203 Compare with California Elections Code Sections 21500(d), 21601(d), and 21621(d).

204 See, e.g., Presentation by Marguerite Leoni with Nielsen Merksamer, *et al.*, before the California State Association of Counties, “Legal Requirements & Technical Aspects of Redistricting in 2021” (Mar. 5, 2021), www.counties.org/sites/main/files/file-attachments/csac-rcrc_redistricting_part_1_technical_presentation_2021-03-05.pdf (under the FMA the “consideration of incumbency and political parties now restricted – to what extent, unclear”) and Legal Memo from Marguerite Mary Leoni with Nielsan Merksamer to Ariel Calonne with the City of Santa Barbara, “Redistricting Legal Requirements” (Mar. 21, 2022), santabarbaraca.gov/sites/default/files/filesync/Advisory_Groups/Independent_Redistricting_Commission/Current/O4_Staff_Reports/2022-03-30_Memorandum%20of%20Law%20for%20IRC%20FINAL.pdf (“State law does not mention consideration of incumbents’ residences as either permissible, or not.”); and *ibid.* (“No court has had the opportunity to rule whether [consideration of unenumerated criteria, like incumbency] is still permissible under the FAIR MAPS Act.”).

205 Isabella Vanderheiden, “Redistricting: Humboldt County supervisors vote to keep as-is,” *Times Standard* (Nov. 16, 2021), www.times-standard.com/2021/11/16/redistricting-humboldt-county-supervisors-vote-to-keep-as-is/.

206 City of Brea, “Frequently Asked Questions (FAQs) Transitioning to By-District Elections” (Dec. 15, 2021), ci.brea.ca.us/DocumentCenter/View/12611.

FAIR MAPS Act: Districting Rules and Goals

1. Federal Laws	2. California Criteria for Cities	3. Other Traditional Redistricting Principles
<ul style="list-style-type: none"> □ Equal Population □ Federal Voting Rights Act □ No Racial Gerrymandering 	<ol style="list-style-type: none"> 1. Geographically contiguous 2. Undivided neighborhoods and “communities of interest” <small>(Socio-economic geographic areas that should be kept together)</small> 3. Easily identifiable boundaries 4. Compact <small>(Do not bypass one group of people to get to a more distant group of people)</small> 	<ul style="list-style-type: none"> □ Respect voters’ choices / avoid head to head contests □ Future population growth <div style="text-align: right;">  </div>



May 4, 2021 3

National Demographics Corporation, Presentation to Tulare City Council (May 4, 2021).

Even where incumbency protection was not explicitly identified, this consideration often ended up overriding the formal criteria, often at the expense of better representation for communities, especially communities of color. Kings County offers a particularly clear example of incumbent self-interest taking precedence over uniting communities of interest. From August until map-adoption in December, the majority of public comment was in support of Map 101, a map submitted by a coalition of civic organizations which would have empowered the county’s underrepresented Latino communities.²⁰⁷ Despite Kings County being 57% Latino, at the time of redistricting there was only one Latino on the Board of Supervisors. However, at the final redistricting hearing, the Board instead voted 3-2 to adopt Map 120, an anonymously-submitted map posted only eight days beforehand, and which had received no prior public comment or Board discussion.²⁰⁸ Supervisor Doug Verboon, who made the motion to adopt Map 120, criticized Map 101 for “carv[ing] out two sitting county supervisors” from their districts, calling it “disrespectful as far as we sit. I’m not gonna choose it for that reason.” By contrast, he praised Map 120 for doing “the least amount of changes to our map,” and keeping each supervisor in their current district.²⁰⁹

Similar comments, dismissing community-supported maps at least in part because of their effect on incumbents, were made in Riverside County. There, a community coalition led by Inland Empire United proposed maps which would have united the Latino communities around Jurupa Valley and northwest Riverside and around Moreno Valley and Perris, among other changes. Uniting these communities would have created two majority-Latino CVAP districts, reflecting the fact that almost half of the county’s population is

207 María G. Ortiz-Briones, “Kings County supervisors adopt anonymously drawn map over public opposition,” *Fresno Bee* (Dec. 14, 2021) [fresnobee.com/vida-en-el-valle/noticias/article256596446.html](https://www.fresnobee.com/vida-en-el-valle/noticias/article256596446.html).

208 *Ibid.*

209 *Ibid.*

Latino.²¹⁰ Although public comment strongly favored the IE United map, Supervisor Jeff Hewitt objected to the map, noting that the “numbering would put me in — where I live right now, where I’ve lived for over 30 years — would put me in a different district. ... It also gets rid of the chair, I believe, too.”²¹¹ He also took personal issue with the goal of uniting the county’s Latino communities, saying he would not draw lines based upon “the way that light reflects off our skin” and that he did not believe that “someone with a little darker skin can represent any group of people better than I can.”²¹² The Board, by split vote, ultimately opted for a map drawn by their chiefs of staff²¹³ that kept each supervisor in their own district and provided for one instead of two Latino-majority districts.²¹⁴ “What we saw happen in Riverside County was pure political self-preservation by the county supervisors,” said Michael Gomez Daly, formerly the Executive Director of Inland Empire United. “It had nothing to do with fair representation for the communities that they purport to serve.”²¹⁵ In response, the ACLU of Southern California has since filed a lawsuit on behalf of IE United and community members, alleging that the county violated the FMA. The Legislature also voted to strip the Board of Supervisors of the power to redistrict in the future, instead assigning this responsibility to an independent commission for future cycles.

In many cases, maps that were adopted to benefit incumbents may also have been drawn to entrench a partisan advantage on the legislative body, although these offices are officially nonpartisan. For instance, Fresno County is plurality Democrat by party registration, but had a Republican majority Board of Supervisors at the time of redistricting. Some stakeholders alleged that the minimum change map the Board adopted, which was based on a map submitted by a Republican political strategist, was intended to preserve conservative control of the Board, despite declining registration.²¹⁶ In San Luis Obispo County, by a partisan 3-2 vote, the Republican majority on the Board of Supervisors adopted a draft map which had been endorsed by the San Luis Obispo County Republican Party.²¹⁷ The Editorial Board of the *San Luis Obispo Tribune* described the map as possibly being “the most gerrymandered map in county history — one that gives Republicans a clear edge in three of the five districts, even though Democrats have a countywide majority.”²¹⁸ A coalition including the local chapter of the League of Women Voters filed suit alleging that the map violated the FMA’s prohibition on partisan gerrymandering. Although the court found that the plaintiffs would likely succeed

210 Tom Coulter, “With ACLU support, community coalition, residents sue Riverside County over redistricting plan,” *Palm Springs Desert Sun* (Jun. 15, 2022), desertsun.com/story/news/politics/2022/06/15/coalition-residents-sue-riverside-county-over-its-redistricting-plan/758863500.

211 Riverside County Board of Supervisors, Redistricting Hearing (Dec. 7, 2021, at 4:32:20), riversidecountyca.iqm2.com/Citizens/Split-View.aspx?Mode=Video&MeetingID=2493&Format=Agenda.

212 *Ibid.*

213 Jeff Horseman, “These 3 maps could give you a new Riverside County supervisor,” *Press-Enterprise* (Nov. 29, 2021), pressenterprise.com/2021/11/24/these-3-maps-could-give-you-a-new-riverside-county-supervisor/.

214 Tom Coulter, “Riverside County supervisors approve redistricting proposal; lawmakers call map ‘legally indefensible,’” *Palm Springs Desert Sun* (Dec. 7, 2021), desertsun.com/story/news/politics/2021/12/07/riverside-county-supervisors-adopt-redistricting-proposal-despite-aclu-opposition/6418548001/.

215 Sameea Kamal, “Voters push to take local redistricting from politicians,” *CalMatters* (Sep. 15, 2022), calmatters.org/politics/2022/09/california-redistricting-local-independent-commissions/.

216 Thaddeus Miller, “Fresno County supervisors pick new district map, but opponents say it’s still status quo,” *Fresno Bee* (Nov. 16, 2021) and Thaddeus Miller, “All three GOP Fresno County supervisors have links to man who drew district maps they favor,” *Fresno Bee* (Nov. 15, 2021), fresnobee.com/news/politics-government/article255525236.html.

217 Peter Johnson, “Lawsuit filed to overturn SLO County’s redistricting map,” *New Times* (Jan. 20, 2022), newtimeslo.com/sanluisobispo/lawsuit-filed-to-overturn-slo-countys-redistricting-map/Content?oid=11967362.

218 Editorial Board, “SLO County must reform its corrupt redistricting process,” *San Luis Obispo Tribune* (Feb. 10, 2022), sanluisobispo.com/opinion/editorials/article257463828.html.

on the merits, it allowed the existing lines to go into effect for the 2022 elections, pending a trial on the merits, which is ongoing as of the writing of this report.²¹⁹

CASE STUDY:

Incumbent self-interest prevails over communities of interest in Los Angeles.

One of the starkest examples of how the redistricting process can be abused to serve the political interests of incumbents came from the City of Los Angeles.²²⁰ A year after Los Angeles's new maps had been adopted, someone anonymously leaked an audio recording of a redistricting strategy session, held while maps were still being finalized, between then-councilmembers Nury Martinez, Gil Cedillo, and Kevin de León and Los Angeles County Federation of Labor President Ron Herrera. The recording made national headlines because of racist, anti-semitic, and homophobic comments made by the participants and led to calls for their firing or removal from office.²²¹ The recording also offered a rare behind-the-curtain look at how the redistricting process can be manipulated to benefit incumbents at the expense of communities of interest.

The private meeting was called in response to draft maps being finalized by the city's advisory commission, which the incumbents felt would harm their political interests. Towards the start of the conversation, de León told his colleagues that the lines the four of them were drawing are “not [for] us[,] it's for Latino strength for the foreseeable future,”²²² a legitimate concern as Latinos are substantially underrepresented on the Los Angeles City Council;²²³ however, their subsequent discussion showed they were far more concerned with building their own political power than that of the Latino community or other communities. The discussion, summarized the *Los Angeles Times*, centered on “how they could manipulate the district borders to help themselves, hurt their foes and, in effect, dilute the strength of Black voters, renters and other communities.”²²⁴

Council President Nury Martinez was blunt that her primary goal was “to get a majority of a good district so that you all can get re-elected.” She told her colleague, Councilmember Gil Cedillo, “if we can slice and dice this baby up to cut you off where you think that favorable people are in, bring those in and send the other part to the, to someone else, I'm all for that.” Cedillo, who was facing

219 *SLO County Citizens for Good Government et al v. County of San Luis Obispo*, No. 22CVP-0007 (San Luis Obispo Sup. Ct.), “Order Denying Petitioners’ Motion for Preliminary Injunction” (Feb. 9, 2022).

220 It is unclear whether the City of Los Angeles was bound by the FMA criteria or not. Under the FMA, charter cities may use their own redistricting criteria instead of the FMA's if the city “has adopted comprehensive or exclusive redistricting criteria in its city charter.” California Elections Code Section 21621(e). In Los Angeles, the city charter says districts must be “drawn in conformance with requirements of state and federal law,” which suggests the City must follow the FMA, but the charter also provides that “to the extent feasible, [districts] shall keep neighborhoods and communities intact, utilize natural boundaries or street lines, and be geographically compact.” Los Angeles City Charter Section 204(d). Regardless, under either the FMA or the City Charter, the City Council was bound to preserve neighborhoods and communities, and neither law includes protecting incumbents as a criterion.

221 Gillian Brassil, “After 3 days of pressure, LA council member who made racist remarks resigns,” *Sacramento Bee* (Updated Oct. 13, 2022), www.sacbee.com/news/politics-government/capitol-alert/article267228997.html.

222 *Times* Staff, “Inside the room: The entire L.A. City Council racist audio leak, annotated by our experts,” *Los Angeles Times* (Nov. 21, 2022), latimes.com/california/story/2022-11-21/la-city-council-racist-audio-leak-transcription-annotation. See also, Knock LA, “LA City Council Members Racist Rant on Redistricting,” Youtube (Oct. 10, 2022 at 55:45), youtube.com/watch?v=Pm9_fXJkt7o&ab_channel=KNOCKdotLA.

223 Editorial Board, “Tired of City Hall scandals? This is the moment to reform Los Angeles city government,” *Los Angeles Times* (Oct. 16, 2022), latimes.com/opinion/story/2022-10-16/tired-of-city-hall-scandals-this-is-the-moment-to-reform-los-angeles-city-government.

224 Editorial Board, “Tired of City Hall scandals? This is the moment to reform Los Angeles city government,” *Los Angeles Times* (Oct. 16, 2022).

a challenge from a Latino candidate to his left, explained that the “the politics are as important to us as the population” in the makeup of a district. He complained that there were too many “activists” who “don’t want us” in one of the proposed draft maps of his district: “Protect me,” he asked, “advance me [i.e., my district’s boundaries] to go west.” Martinez agreed, but warned he needed to closely examine the underlying voting data of the district, because if it was trending to have more White people or “Berners,” i.e., supporters of progressive former presidential candidate Bernie Sanders, that would not help him.

The councilmembers also discussed using redistricting defensively, to help political allies, and offensively, to hurt councilmembers who they were not politically aligned with, sometimes at the expense of keeping communities whole. Herrera told the group that they needed “to make sure that we protect Mitch,” referring to councilmember Mitch O’Farrell, who was facing a progressive Latino opponent.²²⁵ On the other hand, “[t]here’s certain people who don’t merit, like us, rescuing them,” said Cedillo. In particular, he explained, Councilmember Nithya Raman is “not our ally. She is not going to help us.” De León asked if Raman’s district was “the one to put in the blender and chop up, left and right,” to which Cedillo agreed. (Martinez disagreed, because splitting Raman’s district “impacts the Valley, which f--s me.”) Raman, according to the group, wanted to unite Koreatown, a historically Korean but now predominantly Latino and low-income neighborhood, in her district. “I told her that is not happening,” said Martinez, adding “our commitment is not to reelect her.” She later explained that cracking the Koreatown community was politically beneficial: “It serves us to not give her all of K-town. Because if you do, that solidifies her renters district and that is not a good thing for any of us.”²²⁶

The fallout from the leaked tapes continues as of the writing of this report. Councilmember Martinez has resigned and there remain widespread calls for Councilmember de León to do the same. (Cedillo had already lost re-election prior to the audio’s release.) The legitimacy of the existing lines have been called into question, with city officials calling for a new redistricting process to help rebuild public trust. The *Los Angeles Times* editorial board, good government organizations, civic organizations, and incumbent councilmembers have also called for the creation of an independent commission to handle LA redistricting in the future.²²⁷ Attorney General Rob Bonta, the author of the FMA, has also launched a formal investigation into the process.²²⁸

There have only been a few lawsuits filed under the FMA thus far, in part due to a perception by some that the ranked criteria are not easily enforceable in court.

Although many jurisdictions adopted incumbency-protection or status quo maps, often seemingly at odds with the FMA criteria, there have been relatively few lawsuits challenging local maps. As of the writing of this report, lawsuits have been brought in five jurisdictions. Two suits have been resolved, finding violations of FMA criteria. In Morgan Hill, discussed further below, the superior court overturned a map that drew a non-contiguous council district. In West Sacramento, also discussed below, the superior court held that

225 Times Staff, “Inside the room,” *Los Angeles Times* (Nov. 21, 2022).

226 *Ibid.*

227 Editorial Board, “In Los Angeles, political meddling poisons redistricting,” *Los Angeles Times* (Oct. 25, 2022), [latimes.com/opinion/story/2021-10-25/los-angeles-city-redistricting](https://www.latimes.com/opinion/story/2021-10-25/los-angeles-city-redistricting).

228 Office of the California Attorney General, “Attorney General Bonta: California Department of Justice to Investigate Los Angeles City Council Redistricting Process” (Oct. 12, 2022), oag.ca.gov/news/press-releases/attorney-general-bonta-california-department-justice-investigate-los-angeles and Jeremy White, “Los Angeles just got new political maps. A scandal could tear them up,” *Politico* (Oct. 14, 2022), [politico.com/news/2022/10/14/los-angeles-political-maps-scandal-00061883](https://www.politico.com/news/2022/10/14/los-angeles-political-maps-scandal-00061883).

a neighborhood had been unjustifiably split and ordered the adoption of a modified map keeping that neighborhood whole. Three lawsuits against county redistrictings are pending. In San Luis Obispo County, described above, community groups filed a lawsuit alleging that the county impermissibly drew lines to discriminate against a political party.²²⁹ In Riverside County, also described above, the ACLU and Inland Empire United allege that the county cracked Latino communities of interest in violation of the FMA and California Constitution.²³⁰ Finally, in San Diego County, which under state law is bound to follow ranked criteria that are very similar to the FMA's, a nonprofit representing the region's Chaldean community has alleged the county's independent redistricting commission split their community without legal justification.²³¹

Of these cases, the West Sacramento decision offers one of the best examples of a court enforcing the FMA criteria to produce more community-reflective council districts, in keeping with the purposes of the legislation. In 2022, as part of its transition from at-large to by-district elections, West Sacramento adopted a council district map which split the Broderick/Bryte neighborhood, a predominantly low-income and Latino neighborhood.²³² The Broderick Area Homeowners Association and the Latino Information and Resource Network filed suit against the city alleging that the council majority had intentionally split the neighborhood to advance their political interests and, in doing so, violated the FMA's requirements that neighborhoods be kept whole.²³³ The City responded that Broderick/Bryte would benefit from being able to influence who is elected in two council districts instead of one. The superior court, after reviewing extensive public hearing testimony asking that Broderick/Bryte be kept whole, found that the city had violated the FMA and ordered a new map uniting the neighborhood in one district. Broderick/Bryte, explained the court, was "the exact type of neighborhood the FAIR MAPS Act was designed to protect — namely, a geographically contiguous, compact, easily identifiable, and historically disadvantaged, low-income neighborhood with a long history and a common social and economic profile."²³⁴ In splitting Broderick/Bryte and pairing its halves with wealthier, higher turnout areas, the city council was not helping but "'cracking' a disadvantaged neighborhood to marginalize its influence," wrote the court.²³⁵

Despite the plaintiffs' success in West Sacramento, there remains a perception by some advocates that it is difficult to prove a violation of the FMA's ranked criteria. There are "no teeth in the FMA to enforce the law against jurisdictions using incumbency as the primary criterion," explained MALDEF's Steven Ochoa.²³⁶ Scott Rafferty, the prevailing plaintiff's attorney in the West Sacramento case, also described FMA violations as being "very hard to prove."²³⁷ Unlike the federal Voting Rights Act, which has a well-articulated test for

229 Stephanie Zapelli, "SLO County redistricting lawsuit has a new judge. Here's who will hear case," *San Luis Obispo Tribune* (Nov. 2, 2022), sanluisobispo.com/news/politics-government/article268137272.html.

230 ACLU of Southern California, "County Plan Violates the FAIR MAPS Act and the California Constitution" (Jun. 15, 2022), aclusocal.org/en/press-releases/latinx-voters-sue-riverside-discriminatory-redistricting.

231 Morgan Cook, "Chaldean community group sues San Diego County over redistricting map," *San Diego Union Tribune* (Mar. 8, 2022), sandiegouniontribune.com/news/california/story/2022-03-08/chaldean-community-group-sues-san-diego-county-over-redistricting-map.

232 Lucy Hodgman, "West Sacramento illegally divided Latino neighborhood in district map, judge rules," *Sacramento Bee* (Updated Jul. 17, 2022), sacbee.com/community/yolo/article263491753.html.

233 Plaintiff filing in *Latino Information and Resource Network v. West Sacramento*, No. Cv-21-1886 (Yolo Sup. Ct.), "Memorandum in Support of Adoption of Plaintiffs' Map Pending Ex Parte Application for a Special Election and Additional Relief" (May 31, 2022).

234 Order in *Latino Information and Resource Network v. West Sacramento*, No. Cv-21-1886 (Yolo Sup. Ct.), "Order on Plaintiff's Motion to Enforce Settlement Agreement" (Jul. 22, 2022).

235 *Ibid.*

236 Author interview, Steven Ochoa with MALDEF (Apr. 28, 2022 and May 5, 2022).

237 Lucy Hodgman, "West Sacramento illegally divided Latino neighborhood in district map, judge rules," *Sacramento Bee* (Updated Jul. 17, 2022).

proving a violation and decades of elaborating case law, there was no direct precedent for enforcing the FMA criteria for jurisdictions and advocates to look to in the 2020 cycle.

Some of the other potential limitations of the FMA criteria that may make enforcement difficult, as identified by organizations and stakeholders, include:

- ambiguity over whether or not incumbency protection may be used as a criterion and difficulty proving that incumbency protection predominated over other criteria, as discussed above;
- difficulty showing that a claimed community of interest is genuine or a pretext for protecting incumbents; and
- disagreement over whether the “to the extent practicable” exception for the ranked criteria makes them in effect discretionary.

On the last point, despite the FMA’s otherwise clear language, some jurisdictions took the view that the FMA criteria were not in fact mandatory because of the practicability exception. For example, the City of Morgan Hill adopted a non-contiguous council district, against the advice of its demographer and City Attorney, based on a perception that the criteria did not require strict compliance.²³⁸ When the former Mayor sued alleging a violation of the FMA, the City responded that the “use of the qualifier ‘to the extent practicable’ ... underscores the legislative intention and understanding that contiguity is not to be considered the sole, or necessarily predominant, factor, nor should it preempt consideration of the other factors.”²³⁹ Moreover, the City argued, the “term ‘priority’ does not give exclusivity to the first, or any higher-ranked factor, over other subsequently listed factors.”²⁴⁰

Morgan Hill’s interpretation that the FMA reintroduced discretionary criteria was rejected by the superior court, which ordered the adoption of new lines, although without a written explanation for its decision.²⁴¹ Ironically, the very problem with local redistricting law prior to the FMA, as explained in one committee analysis, was that “even basic redistricting criteria, like contiguity, [we]re listed as discretionary considerations, and as consequence [we]re sometimes ignored.”²⁴² Thus, one of the main thrusts of the FMA was to replace formerly permissive and unranked considerations (“may consider”) with mandatory and prioritized criteria (“shall adopt ... using ... in the following order of priority”). The “practicability” limitation, as the Court in the *West Sacramento* case explained, was not an invitation to ignore an inconvenient criterion, but an acknowledgment that in some cases jurisdiction geography or a higher-ranked criterion makes full compliance impossible: in non-contiguous cities, for example, it may not be possible to draw fully contiguous districts.

The federal Voting Rights Act was treated more seriously than the FMA but also sometimes overlooked.

In contrast with their treatment of the FMA, jurisdictions were much more likely to draw fair districts if there was a credible risk that existing lines violated the federal Voting Rights Act (VRA). The City of Dixon, for ex-

238 Michael Moore, “Santa Clara County Judge Strikes Down Morgan Hill Council District Map,” *San Jose Inside* (May 19, 2022), sanjoseinside.com/news/santa-clara-county-judge-strikes-down-morgan-hill-council-district-map/.

239 Defendant Morgan Hill filing in *Tate v. Morgan Hill*, No. No.: 22CV396857 (Santa Clara Sup. Ct.), “Defendants City of Morgan Hill and City Council of the City of Morgan Hill’s Opposition to Petition for Writ of Mandate” (Apr. 26, 2022).

240 *Ibid.*

241 Michael Moore, “Santa Clara County Judge Strikes Down Morgan Hill Council District Map,” *San Jose Inside* (May 19, 2022).

242 Assembly Committee on Local Government, Analysis of AB 849 (Bonta) (Apr. 23, 2019) (quoting California Common Cause).

ample, held four hearings under the FMA and was set to re-adopt its existing district map with little change until the ACLU of Northern California sent a letter arguing that to do so would violate the VRA, which required the creation of a Latino ability-to-elect district. The City’s demographer reviewed the map and agreed with the ACLU, at which point the Council instead adopted a revised map which met VRA requirements.²⁴³

Section 2 of the VRA prohibits election practices or procedures that result in a “denial or abridgement of the right of any citizen of the United States to vote on account of race or color” or spoken language.²⁴⁴ As applied in the redistricting context, the VRA sometimes requires local governments to draw a “majority-minority district,” which are districts that contain a majority of a racial or linguistic minority population. While the VRA already applies to all states and local governments, the FMA also expressly requires that cities and counties comply with the law.

The US Supreme Court established a three-part test for bringing an action under the VRA in *Thornburg v. Gingles*: first, the minority group must be large and compact enough to constitute a majority in a single-member district. Second, the minority group must be “politically cohesive,” meaning the group’s members generally vote similarly. Third, the majority must usually vote together to defeat the minority-preferred candidate. If those three preconditions, often called *Gingles* factors or prongs, are met, the court must then consider whether the “totality of the circumstances” indicate that the minority population does not have an “equal opportunity to participate in the political processes and to elect candidates of their choice,” in which case a jurisdiction must draw a district that gives the community this opportunity, usually a majority-minority district.²⁴⁵

While many jurisdictions took their obligation under the VRA seriously and drew compliant majority-minority districts, some county boards and city councils assumed without doing a preliminary investigation that the VRA did not apply to their jurisdiction, or, like Dixon or Riverside County, only examined their line-drawing obligations under the VRA after receiving legal threats by civil rights organizations. Overall, civic and voting rights organizations reported that many local governing bodies, and even some local independent commissions, seemed to have a poor grasp of how to apply the VRA. Chris Carson, Redistricting Program Director with the League of Women Voters of California, reported that more VRA education was needed because in many jurisdictions “staff wasn’t sure what was required.”²⁴⁶ Lucas Zucker, Policy and Communications Director at CAUSE, observed that few jurisdictions affirmatively analyzed whether racially polarized voting was taking place and, as a result, had “a hard time determining if they really [had] to create a VRA district.”²⁴⁷ In some cases, incumbents expressed open hostility to applying the VRA, accusing groups advocating for VRA majority-minority districts of engaging in racial gerrymandering.²⁴⁸

Gerrymandering was often worse in school district and special district redistricting, where the FMA did not apply.

While some cities and counties disregarded their legal obligations under the FMA, many of the worst abuses this cycle occurred with school district and special district redistricting, which was not subject to the FMA’s transparency, outreach, or line-drawing requirements. Furthermore, compared to cities and counties, school

243 Nick Sestanovich, “Dixon City Council approves final district map,” *The Reporter* (Apr. 6, 2022), thereporter.com/2022/04/06/dixon-city-council-approves-final-district-map/.

244 Voting Rights Act of 1965, 52 United States Code, Section 10301(a).

245 *Thornburg v. Gingles*, 478 U.S. 30 (1986).

246 Author Interview, Chris Carson with the League of Women Voters of California (Apr. 15, 2022).

247 Organizational Stakeholder Local Redistricting Survey (2022).

248 Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

districts (including also community college districts and county boards of education) and special districts generally received far less media attention and public participation to scrutinize their redistricting process. School district and special district redistricting was “basically the wild, wild west” of redistricting, said Stein with California Common Cause.²⁴⁹

Under state law, when redrawing special district election divisions and county board of education trustee areas, the redistricting body “may give consideration to” the following factors: “(1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interests.”²⁵⁰ These are the same considerations that used to apply for city and county redistricting, prior to the adoption of the FMA. There are even fewer constraints for school district and community college district redistricting: the only requirement listed in state law is that the trustee areas be nearly equal in population, which is already mandated by federal law.²⁵¹

Like cities and counties, school districts and special districts were not expressly prohibited from drawing lines to protect incumbents; however, unlike cities and counties, school districts and special districts were not required to follow any mandatory state-law criteria which might place some constraints on their ability to draw lines for political purposes. “The schools and special districts were blatantly going for incumbency protection” in drawing their lines, said Ochoa with MALDEF.²⁵² “At least the cities and counties had to work a little harder” because of the FMA criteria, he added. Some school districts and special districts adopted criteria to expressly protect incumbents. The East Bay Municipal Utility District, for example, adopted a policy that “board members residences will be maintained within their current wards,” which would prohibit uniting a community of interest if doing so would pair two incumbents in the same ward.²⁵³

In many districts across the state, incumbency protection or other political considerations seemed to predominate over other traditional redistricting criteria, and especially keeping communities whole. In the Bay Area, the editor of a local newspaper called the existing Contra Costa Community College governing board wards, which the board re-adopted with few changes, “the most gerrymandered districts I’ve seen” in the county, designed to protect “each of the incumbents for re-election.”²⁵⁴ “Respecting incumbency” was one of the board’s express considerations in drawing the map, which split eight cities, combined communities separated by hills, and was not compact.²⁵⁵ In the Central Valley, the Kern High School District also adopted a minimal-change map. The lines “cracked” the Latino community and ignored community requests to be kept whole, said Pesante with the Dolores Huerta Foundation.²⁵⁶ The Kern High School District had one of

249 Author interview, Jonathan Mehta Stein with Common Cause (Jan. 3, 2023).

250 California Elections Code Section 22000(a) and California Education Code Section 1002(a).

251 California Education Code Section 5019.5(a).

252 Author interview, Steven Ochoa with MALDEF (Apr. 28, 2022 and May 5, 2022).

253 East Bay Municipal Utility District, “2021-2022 Redistricting Guidelines and Criteria” (Adopted Sep. 14, 2021), https://www.ebmud.com/download_file/force/9407/2006?Item_11_-_2021-2022_-_Redistricting_Guidelines_and_Criteria.pdf.

254 Allen Payton, “Analysis: with redistricting Martinez has it best, Brentwood is a close second,” *Contra Costa Herald* (Dec. 30, 2021), contracostaherald.com/analysis-with-redistricting-martinez-has-it-best-brentwood-is-a-close-second/ and Allen Payton, “Contra Costa College Board votes for gerrymandered redistricting map protecting incumbents, splitting more cities,” *Contra Costa Herald* (Jan. 13, 2022), <https://contracostaherald.com/contra-costa-college-board-votes-for-gerrymandered-redistricting-map-protecting-incumbents-splitting-more-cities/>.

255 Allen Payton, “CC Community College Board Proposed Redistricting Map Keeps Wards Gerrymandered Protecting Incumbents,” *Antioch Herald* (Dec. 4, 2021), antiochherald.com/2021/12/cc-community-college-board-proposed-redistricting-map-keeps-wards-gerrymandered-protecting-incumbents/.

256 Emma Gallegos, “KHSD board approves new trustee area maps with few changes,” *Bakersfield Californian* (Dec. 14, 2021), www.bakersfield.com/news/khsd-board-approves-new-trustee-area-maps-with-few-changes/article_9aa6d980-5d37-11ec-9dd6-a7cde66cd556.html.

the “worst” redistricting processes she witnessed, said Pesante. The board “basically said, ‘well, we had this hearing already, and we just redid the lines [in 2018], so we don’t want to make any further changes.’ ... [Then the board] pushed the map through as fast as they could and ignored all the FMA hierarchy” of criteria.²⁵⁷ In Southern California, the San Dieguito Union High School District’s majority-Republican governing board adopted new trustee areas that drew the two Democrats on the board out of their districts.²⁵⁸ Two community members filed suit, alleging the majority had illegally targeted the two board members in the minority and adopted districts that split different communities, diluting the voting power of Latino and Asian residents.²⁵⁹

School district and especially special district redistricting, in general, attracted less media and public attention than city and county redistricting, which may have emboldened some incumbents to draw political or self-serving lines. The few news reports to cover school or special district redistricting public hearings often made a point of noting that only a few or no community members provided public comment.²⁶⁰ Schools and districts were not subject to the transparency and outreach rules required of cities and counties under the FMA; organizational stakeholders reported that it was a lot harder to track and engage in district redistricting as a result. For example, as contrasted with the FMA, districts were not required to provide advance notice of meetings, create a redistricting webpage, do public outreach, hold a minimum of four public hearings, or provide live-translation at hearings. Some schools and districts voluntarily complied with the FMA as a best practice,²⁶¹ but most did not.

Overall, redistricting was “much better in jurisdictions where the FAIR MAPS Act applied,” said Zucker, with CAUSE. “Most school districts barely had any public engagement in redistricting,” he said, and “didn’t have well-publicized time-certain hearings making it very hard to engage [in the process] without insider lobbying.”²⁶² In a survey of organizational stakeholders, 79% said the school and special district redistricting process would be improved if the FMA process and criteria requirements were extended to apply to those jurisdictions.²⁶³

257 Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

258 Kristen Taketa, “County warns San Dieguito school board that map may be illegal; lawsuit says it’s gerrymandering,” *San Diego Union Tribune* (Mar. 6, 2022), www.sandiegouniontribune.com/news/education/story/2022-03-06/redistricting-becomes-latest-school-board-fight-in-fractured-san-dieguito.

259 Bill Slane, “Lawsuit claims SDUHSD map violates California Voting Rights Act,” *The Coast News* (Feb. 22, 2022), thecoastnews.com/lawsuit-claims-sduhsd-map-violates-california-voting-rights-act/. San Diego’s County Committee on School District Organization later reversed the map on a technicality. Because the board allegedly adopted its map after the District’s redistricting deadline, the County Committee imposed a different trustee area map on the District, which was used in the 2022 elections. See Kristen Taketa, “County approves new redistricting map for troubled San Dieguito school district,” *San Diego Union-Tribune* (Apr. 26, 2022), <https://www.sandiegouniontribune.com/news/education/story/2022-04-26/county-approves-new-redistricting-map-for-troubled-san-dieguito-school-district>.

260 See, e.g., Reggie Ellis, “VUSD board approves new political maps,” *The Sun-Gazette* (Feb. 2, 2022), thesungazette.com/article/education/2022/02/02/vusd-board-approves-new-political-maps (only one public commenter as Visalia Unified School District board approves maps keeping each member in their own trustee area) and Publisher, “BART Board will consider third proposed map during final redistricting public outreach meeting Wednesday,” *Contra Costa Herald* (Jan. 29, 2022), contracostaherald.com/bart-board-will-consider-third-proposed-map-during-final-redistricting-public-outreach-meeting-wednesday/ (Noting that “[f]ew people seem interested in participating in the process in spite of the significant impact redistricting has on who will run for office and be elected over the next 10 years” and that only two people spoke at the last hearing.).

261 Redistricting Partners, a redistricting consulting firm, recommended that its school and special districts clients follow the FMA as a best practice. See, e.g., Letter from Paul Mitchell with Redistricting Partners to Jim Pruet with the San Mateo Harbor District (Jun. 17, 2021), https://www.smharbor.com/files/60816c58d/2021_08_18_Item_11_Att_2_Redistricting+Services+San+Mateo+Harbor+District.pdf.

262 Organizational Stakeholder Local Redistricting Survey (2022), comment by Lucas Zucker with CAUSE.

263 Organizational Stakeholder Local Redistricting Survey (2022). The remaining 21% had no opinion. *Ibid.*

Recommendations

→ **Recommendation 4.1: Prohibit jurisdictions, including charter cities, from drawing lines to favor or discriminate against incumbents.**

Nearly all of the major abuses of the local redistricting process this cycle — where whole communities were cracked, or cracked communities that should have been made whole were not — came from incumbents drawing lines to protect themselves, to help a chosen successor, or to harm a political opponent. In many jurisdictions incumbency-protection became the sole or driving criterion for how maps were drawn, undercutting the FMA’s overriding goal of creating neighborhood and community-reflective districts that fairly represent the diversity of a jurisdiction. The FMA’s silence on the legality of using incumbency as a redistricting criterion only served to encourage the practice of prioritizing incumbency, sometimes openly. By contrast, Proposition 11, creating the state-level California Citizens Redistricting Commission, expressly prohibits incumbency-protection gerrymandering, as do all the laws enacted by the State Legislature creating county independent redistricting commissions. The CCRC has now twice successfully completed federal and state redistricting without consideration of incumbency advantage or even an awareness of incumbents’ addresses, frequently drawing incumbents into districts together if that best suits the goal of community empowerment and honoring public testimony. The FMA should be amended to do the same and, to avoid any ambiguity, expressly apply this criterion to charter cities as well.

Of course, unlike citizen commissions, incumbents know their own addresses and often those of their colleagues, and it would be unrealistic to expect that a ban can entirely eliminate incumbency protection gerrymandering when incumbents are drawing the lines. Even so, a clear ban is still important for a number of reasons. First, it puts incumbents on clearer notice that they need to justify their maps in terms of how it benefits the community, not their own electoral prospects, which will likely prevent some of the more egregious abuses of the line-drawing process. Second, it will eliminate the legal endorsement and tacit encouragement of line-drawing to help incumbents by jurisdictions’ demographers and attorneys, which was widespread in memos, presentations, and oral advice this cycle. Third, it will give community groups an additional tool to challenge maps that are inexplicable other than for incumbency protection reasons, and give courts additional reason to be skeptical of such maps.

→ **Recommendation 4.2: Clarify that the ranked criteria must be followed to the “maximum” extent practicable and that unranked criteria cannot be given precedence over ranked criteria.**

Another issue that came up with respect to the FMA’s current criteria was the false perception among some jurisdictions that following the criteria and their order of priority was not mandatory, which is contrary to both the text and purpose of the FMA. This perception hinged on the fact that each of the FMA criteria must only be followed, per the language of the law, “to the extent practicable.”²⁶⁴ While the court orders in both *Morgan Hill* and *West Sacramento* cases have upheld that the ranked criteria are mandatory, as lower court orders, neither decision is legally-binding precedent for future redistricting. As such, it is unclear that either decision will alter local jurisdictions’ behavior in future cycles. To protect against this, the FMA should be amended to clarify that the criteria are mandatory, must be followed to the “maximum” extent practicable, and that lower-ranked criteria cannot be made to trump higher-ranked criteria.

264 California Elections Code Sections 21500(c), 21601(c), and 21621(c).

→ **Recommendation 4.3: Require that jurisdictions adopt a report indicating how their maps comply with the redistricting criteria, including providing a justification whenever a neighborhood or community of interest is split.**

In many jurisdictions, elected officials adopted maps without explaining how the maps they adopted complied with the FMA criteria. In particular, elected officials rarely provided any justification when a neighborhood or community of interest was split. Elected officials for the most part did not “justify which communities of interest they prioritized” over others in adopting maps, explained Angélica Salceda, with the ACLU of Northern California, “they didn’t justify their choice at all.”²⁶⁵ Incumbents, she added, sometimes “made overt comments that their interest was to protect their seats” but, when challenged, “later claimed to adopt maps for other reasons.”²⁶⁶ The lack of an upfront explanation for why maps were drawn as they were contributed to the sense that the FMA would be difficult to legally enforce, because a jurisdiction might claim after-the-fact that any neighborhood or community splits were needed to keep whole a previously unarticulated community.

Local governments should be required to adopt a report explaining how the map they adopted matches the FMA criteria, and particularly a reason for any community or neighborhood splits. A final report requirement already exists for the State Commission and many local independent redistricting commissions, including for both large counties like Los Angeles and smaller cities like Menlo Park.²⁶⁷ Requiring a formal report would bring greater accountability to the line drawing process. If elected officials and demographers know ahead of time they will be required to justify their work, they are more likely to adopt FMA-compliant maps. And, if they adopt a non-compliant map that inexplicably splits a community which should have been kept whole, courts will be less likely to accept a post-hoc explanation that was not discussed in the record or explained in the formal report. For example, in the West Sacramento case, the City claimed that splitting Broderick/Bryte was necessary to preserve a riverfront community; however, the Court was suspicious of and rejected this defense because the desirability of a riverfront community never came up in the public hearings “other than a few isolated remarks” and because the city council’s preferred map also split up riverfront neighborhoods, just in a different place.²⁶⁸

An explanatory report would also make the process more transparent. Redistricting often involves competing priorities and trade-offs. It often happens that a neighborhood or community must be split to keep another whole, or for equal population reasons. A report explaining why a neighborhood or community had to be split would increase confidence in the process, particularly for members of that community. “Better documentation of communities of interest would help from a public trust perspective,” said Julia Marks, formerly with Asian Law Caucus, “so people know they were listened to.”²⁶⁹ Tulare County’s Advisory Commission’s final report offers a good example of how a jurisdiction can “show its work;” for each draft map the Commission considered or recommended, the Commission identified how the map complied with the FMA’s redistricting criteria, including whether it split or kept whole the identified communities in the county, then provided a brief summary of why this configuration was recommended or rejected.²⁷⁰

265 Author interview, Angélica Salceda with ACLU of Northern California (Apr. 22, 2022).

266 Organizational Stakeholder Local Redistricting Survey (2022), comment by Angélica Salceda with the ACLU of Northern California.

267 California Elections Code Section 21534(d)(3) and Menlo Park Resolution No. 6659 (2021).

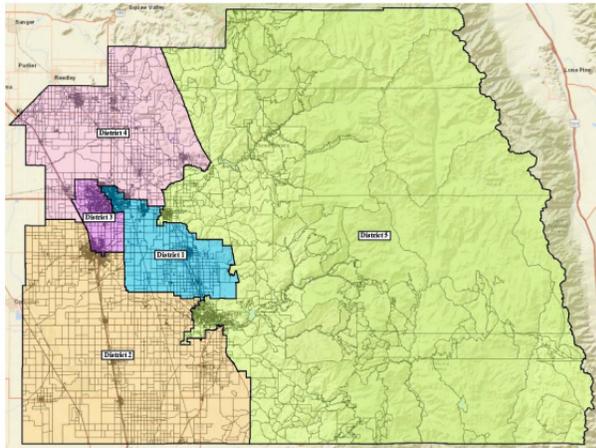
268 Order in *Latino Information and Resource Network v. West Sacramento*, No. Cv-21-1886 (Yolo Sup. Ct.), “Order on Plaintiff’s Motion to Enforce Settlement Agreement” (Jul. 7, 2022).

269 Author interview, Julia Marks with Asian Law Caucus (Apr. 15, 2022).

270 Tulare County 2021 Advisory Commission on Supervisorial Redistricting, “Final Report” (Oct. 21, 2021), [tularecounty.ca.gov/redistricting/commission/2021-commission-final-report/](https://www.tularecounty.ca.gov/redistricting/commission/2021-commission-final-report/).

COM-001B Equity Coalition Map

On September 30, 2021, the Equitable Map Coalition submitted another revision to its map, COM-001A Equity Coalition Map, for Commission consideration. Primary revisions included incorporating the entire City of Exeter into District 5. This map also included final State-adjusted 2020 Census Data. On October 7, 2021, staff presented an analysis of the map's compliance with the eight redistricting criteria.



Summary Data, 2020 Census Data from County database, Final State-adjusted

COM-001B				CRITERIA #1		CRITERIA #2	
District	Total Pop	Deviation from mean	% Deviation	Hispanic Pop	Hispanic Pop as a % of Total Pop	Total CVAP	H-CVAP as a % of Total CVAP
1	95,022	11	0.01%	67,093	71%	50,961	29,419
2	95,022	11	0.01%	71,380	75%	44,022	27,838
3	94,992	-19	-0.02%	41,874	44%	59,655	20,861
4	95,070	59	0.06%	72,634	76%	50,012	31,223
5	94,950	-61	-0.06%	58,305	61%	54,216	23,347
SUM	475,056			311,286	66%	258,866	132,688
MEAN	95,011		0.13%	62,257	66%	51,773	26,538

Compliance with Redistricting Criteria

Criteria	Analysis of Compliance with Redistricting Criteria
1. Population Equality	0.13% population deviation
2. Legal Compliance	H-CVAP majorities in the following districts: <ul style="list-style-type: none"> • District 1 – 57.7% • District 2 – 63.2% • District 4 – 62.4%
3. Contiguity	✓ All five districts are geographically contiguous
4. Community Integrity	<ul style="list-style-type: none"> ✗ Terra Bella and Ducor not together with City of Porterville ✓ West Goshen in District 4 ✓ Foothill-Mountain community in one district ✗ Tulare and Visalia not in the same district ✓ Tule River Tribe lands in the same district ✓ Porterville in District 5 ✗ Visalia divided into more than two districts
5. City or CDP Integrity	<ul style="list-style-type: none"> ✗ Visalia is divided into three districts due to population size ✗ Tulare is divided into two districts
6. Identifiable Boundaries	✓ Districts are drawn using identifiable boundaries
7. Compactness	Districts 5 is the least geographically compact, spanning the entire county from north to south.
8. No Political Parties	✓ District boundaries do not appear to favor or discriminate against any political party.

Commission Comments

On September 30, 2021, the Commission voted to recommend the final Equity Coalition Map (COM-001B) to the Board of Supervisors for consideration. At the following meeting, on October 7, 2021, the Commission voted to make the following findings associated with its recommendations:

1. The map is in compliance with three districts of H-CVAP majority;
2. Takes into consideration the community input that the Commission received regarding the single mountain district;
3. Splits the City of Tulare into two different districts, which, while not the preference of all Commissioners, reflects the voices we heard in the community and provides a diversity in maps recommended to the Board of Supervisors;
4. Fair distribution of population, to date had the most impressive population deviation;
5. Strongest number for H-CVAP majorities through the districts;
6. Most inclusive support by community members and most significant public turnout at meetings; and
7. Terra Bella, Ducor, and Poplar communities have more in common with City of Porterville than City of Tulare with specific regard to where individuals go to school and shop.

Tulare County Advisory Commission Final Report - Draft Map Criteria Checklist

➔ Recommendation 4.4: Require that counties and cities to do a Gingles prong 1 analysis and, if a racially-polarized voting analysis is conducted, require that a summary of that analysis be published.

The federal VRA provides critical protection against discrimination for communities of color in the local redistricting process. However, as reported above, many jurisdictions are failing to take even preliminary steps to determine if the VRA applies. To ensure they do so, state law should be amended to require that jurisdictions take the first step in the *Gingles* analysis, which is examining whether or not a geographically compact majority-minority district can be drawn in a jurisdiction. This is a straightforward analysis that can quickly determine whether or not a jurisdiction is at-risk of violating the VRA, in which case the jurisdiction should conduct a more in-depth analysis, based on prior election results, as to whether racially-polarized voting is present. To promote transparency in the process, if a jurisdiction does conduct a racially-polarized voting analysis, it should publish a summary of its findings, including the elections that were considered in the analysis, so that the public and community organizations may review both the results and methodology.

➔ Recommendation 4.5: Extend the FMA to apply to all local governments.

Redistricting abuse is not limited to cities and counties; incumbency-protection and political gerrymandering was alleged to have occurred in numerous school districts and special districts as well. However, unlike for cities and counties, there are no mandatory state-law redistricting criteria for school and special district redistricting to deter bad actors and provide a clear legal remedy against the worst abuses. In addition, school and special districts are not required to follow any redistricting-specific transparency rules, or engage in any outreach to affected communities, resulting in a process with less public input to create more community-reflective maps and less public scrutiny to hold officials accountable for the lines they adopt.

To ensure neighborhoods and communities are legally prioritized in school and special district redistricting, and not just in city and county redistricting, the FMA criteria should be extended to apply to all local governments. Similarly, to encourage broader and more diverse participation in the process, the FMA's baseline transparency and public outreach requirements should be extended as well. Creating a universal standard for local redistricting, instead of a jurisdiction-specific standard, will also improve compliance and predictability of process for the public, because all local governments would be following the same rules and procedures.



5. COMMISSIONS

Independent Redistricting Commissions adopted maps that better reflected the interests of communities over incumbents.

One of the biggest differences between this local redistricting cycle and the last cycle was the explosion in jurisdictions using independent redistricting commissions (IRCs). With an IRC, the commission has the power to adopt district lines independent of the legislative body. Twenty-two cities and counties in California had IRCs redraw their election districts, including the two biggest counties (Los Angeles and San Diego) and five of the ten biggest cities in the state (San Diego, San Francisco, Sacramento, Long Beach, and Oakland).

IRCs had a far better track record of producing community-oriented maps in keeping with the goals of the FMA than when elected officials drew their own maps. IRCs whose commissioners were not directly appointed by elected officials: were more likely to draw maps that kept communities whole, especially marginalized or underrepresented communities; were more likely to encourage and be responsive to community feedback; were more likely to run transparent and high-integrity processes; and, showed no evidence of trying to protect incumbents or draw maps that advanced the interests of one political party over another.

Although more people resided in a county or city using an IRC, numerically far more jurisdictions used advisory redistricting commissions (ARCs) this cycle, which had the power only to recommend draft maps. The legislative body could then adopt, revise, or ignore the ARC's recommendation. The use of ARCs was much more controversial than IRCs; in some jurisdictions, organizational stakeholders felt they created more opportunities for public participation. However, in many jurisdictions, ARCs recommended maps that protected incumbents or, if the map departed too radically from the status quo, saw their recommendations ignored. The infamous case of the City of Los Angeles, whose redistricting process was consumed by scandal, used an advisory redistricting commission.

Overall, IRCs significantly outperformed legislative bodies in terms of conducting a transparent process, promoting public participation, and drawing community-reflective maps.

Although organizational stakeholders were ambivalent as to whether the 2020 local redistricting cycle had produced better maps than the 2010 cycle, there was significantly more agreement that independent redistricting commissions, where they existed, outperformed legislative bodies in drawing more representative and equitable election districts. In a survey of organizational stakeholders, of those that had observed an IRC, two-thirds thought an IRC had led to a significantly (50%) or somewhat (16%) better redistricting process than legislatively-controlled redistricting; the remaining one-third of respondents were unsure, and no respondent thought that an IRC had produced a worse process.²⁷¹ Organizations that had monitored the redistricting process in jurisdictions both with and without IRCs came out the strongest in favor

271 Organizational Stakeholder Local Redistricting Survey (2022).

of independent over legislatively-controlled redistricting. “California Common Cause watchdogged the redistricting processes of over 60 cities, counties, and school boards in 2020-2022,” wrote Jonathan Mehta Stein, Executive Director of California Common Cause. “All of the most participatory, most inclusive, most transparent, and most fair processes were all run by independent redistricting commissions. All of the most manipulative, most self-serving, and least participatory processes were all run by sitting incumbents.”²⁷²

Local chapters of the League of Women Voters of California also monitored or participated in the redistricting process of dozens of local jurisdictions. “In the League’s observations, independent commissions did not set out to protect incumbents,” reported Chris Carson, with the League of Women Voters of California.²⁷³ “They focused on respecting communities of interest to a degree that legislative bodies did not,” she said.

This view was also shared by some redistricting consultants who worked both with local legislative bodies and IRCs in California. “I’ve been involved in over 100 redistrictings, including commissions, independent and otherwise,” said Paul Mitchell, the owner of Redistricting Partners, one of the main local map-drawing firms in California this cycle. “When you have an Independent commission, not appointed by the elected [officials], it is demonstrably better.” Independently-appointed commissions, he continued, “have demonstrated non-partisan behavior in every case I have seen. Those appointed by the elected officials, [on either a] partisan or nonpartisan basis... exhibit more partisan / pro-incumbent behavior.”²⁷⁴

IRC performed especially well in three areas: (1) adopting maps independent of the political interests of incumbents or political parties; (2) encouraging public participation and being responsive to community feedback; and (3) adopting district lines that followed redistricting criteria, especially prioritizing keeping communities whole.

IRCs whose commissioners were appointed independent of the legislative body had a strong track record of prioritizing communities over incumbent self-interest.

As contrasted with legislative redistricting discussed in the previous section, local IRCs had a strong track record of ignoring the interests of incumbents in drawing new lines. For example, in Sacramento, Long Beach, and Escondido, the local IRC drew one or more incumbents out of their districts, something unlikely to have occurred in an incumbent-controlled process.²⁷⁵ Political independence freed commissioners to be more attentive to public comment and to try and craft districts that better reflected a jurisdiction’s underlying communities. “There’s lots of evidence that the independent commissions are more creative and open to community input since it is not the commissioners’ jobs on the line,” explained Sky Allen, Executive Director of Inland Empire United.²⁷⁶

Of course, political actors, including incumbents and political parties, did sometimes attempt to surreptitiously influence a commission-based redistricting process. In Long Beach, for example, political consultants submitted maps that would have kept all incumbents in their districts, and councilmembers and

272 Jonathan Mehta Stein, “Californians Can’t Wait Any Longer for Independent Redistricting,” *Ethnic Media Services* (Oct. 13, 2022), ethnicmediaservices.org/oped/californians-cant-wait-any-longer-for-independent-redistricting/.

273 Autor Interview, Chris Carson with the League of Women Voters of California (Apr. 15, 2022).

274 Paul Mitchell (@paulmitche11), tweet reply (Oct. 11, 2022, at 8:56 am and 10:35 am, twitter.com/paulmitche11/status/1579863476041707525).

275 Theresa Clift, “These Sacramento neighborhoods won’t have a City Council member for 2 years. Here’s why,” *Sacramento Bee* (Apr. 22, 2022), www.sacbee.com/news/local/article260591167.html; Pierce Singgih, “What Long Beach’s new political map means for June’s election,” *Long Beach Press-Telegram* (Dec. 1, 2021), www.presstelegram.com/2021/12/01/what-long-beachs-new-political-map-means-for-junes-election/; and Joe Tash, “In Escondido race, three incumbents are seeking re-election, including the mayor,” *San Diego Union-Tribune* (Oct. 25, 2022), www.sandiegouniontribune.com/communities/north-county/escondido/story/2022-10-25/escondido-election-story.

276 Author interview, Sky Allen with Inland Empire United (May 6, 2022).

their staff sometimes testified before the Commission without disclosing who they were. According to local press, for example, Councilwoman Cindy Allen testified before the Commission calling herself only “Cindy.”²⁷⁷ However, the stark differences in the maps that IRCs often adopted compared with the maps incumbents often adopted, and the record of IRCs drawing incumbents out of their districts, makes clear that incumbents had far less success changing maps to their benefit under a transparent IRC process than when incumbents could simply draw the lines on their own or work out political agreements behind closed doors. Councilwoman Allen, for example, was ultimately drawn out of her district. Moreover, where public testimony over the boundaries or existence of communities of interests clashed, IRCs, which were composed of residents of the jurisdiction, were often able to parse genuine versus politically-motivated claims of community. Paul Mitchell, whose firm assisted with Long Beach’s redistricting and several other California local IRCs, said that while he observed some organized “incumbent astroturfing,” it was not widespread “to any significant extent” and commissioners quickly “became more cognizant of these kind[s] of things” as the process continued.²⁷⁸

CASE STUDY:

In Martinez, an IRC fixes one of the most gerrymandered maps in California.

The City of Martinez offers one of the most vivid examples of an independent commission placing the interests of communities over incumbents. The City first adopted districts in 2018 in response to a threatened California Voting Rights Act (CVRA) lawsuit alleging that the city’s at-large election system had disenfranchised the city’s Latino residents.²⁷⁹ However, rather than draw districts that reflected the city’s neighborhoods and communities, the council directed its demographers to draw each district as a “linear microcosm” of the city as a whole, creating thin, twisting ribbon districts running from the North-West to the South-East corners of the City. These districts split communities, neighborhoods, and even voting precincts.²⁸⁰ The driving force behind these contorted lines was to protect incumbents, four out of five of whom lived near each other in the city’s downtown corridor, including two councilmembers who lived on the very same block.²⁸¹ Responding to criticism of the districts at a public meeting, Councilmember Mike Ross flatly stated that “[i]f any reasonable person thinks that we’re gonna sit up here and choose a map that basically takes ourselves out of office ... God bless you, you can have that as your choice.”²⁸² The CVRA complainants sued Martinez over the map; while the pre-FMA map was ultimately upheld, the judge wrote the map was “absurd,” “verges on self-parody in flouting” traditional redistricting criteria, was “consciously drawn to try to cross boundaries of community of interests,” and was “reminiscent of the maps in history textbooks of

277 Jason Ruiz, “Commission calls for changes to keep politics out of decisions over political boundaries,” *Long Beach Post* (Jan. 7, 2022), lbpost.com/news/commission-calls-for-changes-to-keep-politics-out-of-decisions-over-political-boundaries.

278 Email to author (Dec. 28, 2022).

279 Donna Beth Weilenman, “Council Chooses ‘Orange Version 4’ Voter District Map,” *Martinez News-Gazette* (Feb. 24, 2018), martinezegazette.com/council-chooses-orange-version-4-voter-district-map/.

280 Donna Beth Weilenman, “Council Chooses ‘Orange Version 4’ Voter District Map,” *Martinez News-Gazette* (Feb. 24, 2018) and Ana Guzzetti, “Residents call for independent redistricting at Council meeting,” *Martinez News-Gazette* (Sep. 8, 2019), martinezegazette.com/residents-call-for-independent-redistricting-at-council-meeting/.

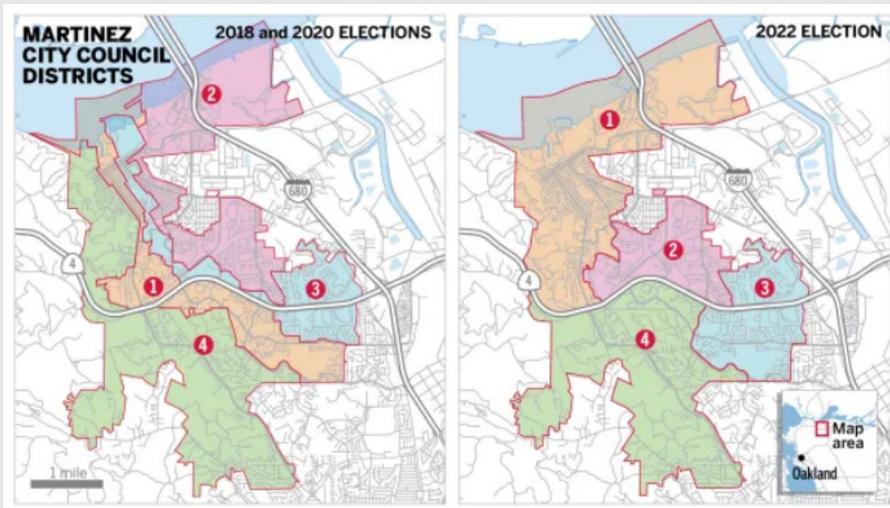
281 Rick Jones, “Sources: Farias recruited lawyer to target Martinez,” *Martinez News-Gazette* (Nov. 19, 2017), martinezegazette.com/sources-farias-recruited-lawyer-to-target-martinez/ and Nate Gartrell, “Judge may force Martinez to change its City Council districts; lawsuit headed to trial,” *The Mercury News* (Feb. 5, 2020), www.mercurynews.com/2020/02/05/judge-may-force-martinez-to-change-its-city-council-districts-lawsuit-headed-to-trial/.

282 Nate Gartrell, “Judge may force Martinez to change its City Council districts; lawsuit headed to trial,” *The Mercury News* (Feb. 5, 2020).

the original Massachusetts ‘gerrymander.’²⁸³ Proponents of the FMA would later cite Martinez as an example of the need to reform the redistricting criteria.

Public backlash forced the city to establish an independent commission for the upcoming redistricting cycle. The seven-member commission was appointed independently of the city council: after a public application process, four members were selected at random, one from each existing district, then those four commissioners appointed the final three commissioners.²⁸⁴ After an extensive outreach campaign, the Commission held 14 public hearings and received 30 draft map submissions from the public.²⁸⁵ A columnist with the *Contra Costa Herald*, after surveying different local redistrictings in the region, opined that “Martinez offers the best process in the county.”²⁸⁶

The IRC’s final map undid the “snaking boundaries” of the prior incumbency-protection gerrymander, wrote the *East Bay Times* Editorial Board, and replaced them with “logical and compact districts” and drew two new districts “predominantly south of Highway 4, giving voice to nearly half the city that has been short-changed for far too long.”²⁸⁷ The new map, the Chair of the Commission explained, attempted to keep neighborhoods whole, and especially the previously fractured downtown area which had “the greatest population of low-income folks.”²⁸⁸ What was not taken into account was protecting incumbents; the new map drew three sitting councilmembers in the same district.²⁸⁹



East Bay Times graphic comparing prior and current Martinez council district boundaries.

283 Tentative ruling in *Sanchez v. City of Martinez*, No. MSC18-02219 (Contra Costa Sup. Ct., May 3, 2019), www.cc-courts.org/civil/TB/archive/Department%2012%20E2%80%9320Judge%20Treat/12_050319.pdf.

284 City of Martinez, “Get to know the Independent Redistricting Commission (IRC),” redefinemartinez.org (accessed Nov. 2022).

285 City of Martinez, “Schedule,” redefinemartinez.org/schedule/ (accessed Nov. 2022); Martinez City Council Meeting, Martinez Independent Redistricting Commission Presentation on Agenda Item 12 (Apr. 6, 2022, at 1:27-1:55), martinez.granicus.com/player/clip/1810?view_id=7&redirect=true.

286 Allen Payton, “Analysis: with redistricting Martinez has it best, Brentwood is a close second,” *Contra Costa Herald* (Dec. 30, 2021), contracostaherald.com/analysis-with-redistricting-martinez-has-it-best-brentwood-is-a-close-second/.

287 Editorial Board, “Editorial: Martinez badly needs a new generation of leaders,” *East Bay Times* (Oct. 26, 2022), www.mercurynews.com/2022/10/26/editorial-martinez-badly-needs-a-new-generation-of-leaders.

288 Martinez City Council Meeting, Martinez Independent Redistricting Commission Presentation on Agenda Item 12 (Apr. 6, 2022, at 1:27-1:55), martinez.granicus.com/player/clip/1810?view_id=7&redirect=true.

289 CBS Bay Area News, “Martinez City Council Approves New Voting Districts” (Apr. 7, 2022), <https://www.cbsnews.com/sanfrancisco/news/martinez-city-council-approves-new-voting-districts/>.

IRCs encouraged public participation and were more receptive to community feedback, especially from underrepresented communities, than legislative bodies. IRCs were also more transparent in terms of how that feedback was used.

One of the biggest advantages of having redistricting conducted by IRC instead of a legislative body was that IRCs had capacity to hold far more meetings — including workshops and public hearings — which provided more opportunities for the public to provide feedback on their communities and to suggest changes to draft maps. For example, Los Angeles County’s IRC held 56 meetings, including 16 public hearings, and San Diego County’s IRC held 49 meetings, including 10 public hearings.²⁹⁰ County IRCs, on average, held more than five times as many redistricting meetings as county boards of supervisors (and about three times as many as advisory commissions).²⁹¹ City IRCs, too, held a significant number of meetings. For example, Sacramento and Long Beach’s IRCs held 30 and 23 meetings, respectively.²⁹²

Number of County Redistricting Meetings

County Redistricting Body:	Advisory Commission		IRC Alone
	Board Alone	+ Board	
Average number of meetings (hearings + workshops)	9	16	47

Public participation in IRC-led redistricting was generally very robust, in part because of the number of hearings IRCs held, but also because IRCs increased public confidence that the testimony would be listened to. Long Beach’s IRC, for example, reported receiving “772 communities of interest form submissions[,] over 16 hours of public comment[,] over 1,000 pages of written correspondence[,] 90 community of interest map submissions[, and] 110 partial and full district plan submissions.”²⁹³ IRC jurisdictions, reported Stein with Common Cause, “generated way more participation across the board” because they “put in more effort at getting the public to participate and there was more of a sense on the part of the public that it mattered.”²⁹⁴ Many IRCs, for example, established dedicated outreach subcommittees and either had or requested outreach budgets to reach the broader public and underrepresented communities in particular.²⁹⁵

IRCs also had a strong record of being responsive to requests from the public and community organizations at public hearings to keep communities of interest intact, especially underrepresented and marginalized communities. In Sacramento, residents and neighborhood leaders of the historically Black and lower-income Meadowview neighborhood, which had been split under the prior boundaries, spoke strongly in favor of being made whole and kept together with similar communities in South Sacramento, which the IRC

290 Los Angeles County Citizens Redistricting Commission, “Final Report” (Updated Dec. 30, 2021), <https://redistricting.lacounty.gov/wp-content/uploads/2021/12/Final-Report-Online-without-Attachment.pdf> and County Of San Diego 2021 Independent Redistricting Commission, “Final Report” (Upd. Jan. 12, 2022), www.sandiegocounty.gov/content/dam/sdc/redistricting/docs/ircmeetings/irc-meeting-01-26-22/County%20of%20San%20Diego%202021%20IRC%20Final%20Plan%20Amended%2020220126.pdf.

291 Analysis by author (2022). The author examined the schedules of 41 of the 58 counties, including: 20 counties where the board alone conducted redistricting, 17 counties that had an ARC to recommend lines to the board, and four counties that had an IRC draw supervisorial district lines.

292 Long Beach Independent Redistricting Commission, “Report and Recommendations” (Jan. 2022), www.longbeach.legistar.com/View.ashx?M=F&ID=10381159&GUID=BC1B46C1-7CD1-41D9-AA89-CA076896725E and Sacramento Independent Redistricting Commission, “2021 Redistricting Final Report” (Jan. 24, 2022), sacramento.granicus.com/MetaViewer.php?view_id=64&clip_id=5157&meta_id=663293.

293 Long Beach Independent Redistricting Commission, “Report and Recommendations” (Jan. 2022) (bullets removed and capitalization adjusted).

294 Stein interview.

295 See, e.g., Los Angeles County Citizens Redistricting Commission, “Final Report” (Rev. Dec. 30, 2021).

did.²⁹⁶ “Meadowview, in particular, was active in petitioning the [Sacramento IRC] and the final boundaries represent this work on the community’s behalf,” wrote the IRC in its final report.²⁹⁷ In Long Beach, the IRC acceded to pleas to unite the city’s historically disenfranchised Cambodian community. Long Beach is home to one of the largest Cambodian populations in the United States; however, for decades the population and cultural center of this community, the Cambodia Town neighborhood, had been split between two council districts.²⁹⁸ Uniting large and long-disenfranchised communities often meant adopting maps that differed substantially from their precursors and could be disruptive to the local political status quo, which is why legislative bodies were less likely to be responsive to such requests.

IRCs were also more transparent, which gave the public more confidence that community testimony was being considered and that the redistricting criteria were being followed. IRCs for the most part did their deliberation and line-drawing in public, sometimes even adjusting district lines in real-time in response to community testimony, and generally produced a final report justifying how the maps complied with each redistricting criterion, something few legislative bodies did. IRCs “used an open and transparent process: everyone saw how the Commission was drawing the lines,” said Carson with the League of Women Voters.²⁹⁹ By contrast, legislative bodies might receive “hours of COI testimony, then the board would leave, draw maps in back rooms, then come back out and show the new maps” without explaining their reasoning, said Cynthia Valencia, Senior Policy Advocate and Organizer with the ACLU of Southern California.³⁰⁰ This added level of transparency helped to reinforce the public’s confidence in the legitimacy of an IRC’s process.

CASE STUDY:

Receptivity in San Diego County and resistance in El Cajon to testimony from the refugee community.

IRCs’ responsiveness to community testimony was particularly apparent to organizational stakeholders that participated in local redistricting processes involving both IRCs and legislative bodies. For example, Jeanine Erikat, former Policy Associate at PANA, which advocates for the growing Black, Arab, Middle Eastern, Muslim and South Asian (BAMEMSA) refugee and immigrant communities in the San Diego region, reported a starkly different experience organizing those communities to participate in the local redistricting process for San Diego County, which used an IRC, and the City of El Cajon, located in the county, which did not.³⁰¹ More than 300 refugee community members participated in the State, County, and City redistricting process to share the unique needs of that community of interest, which one organizer described as “disproportionately impacted by housing

296 Kris Hooks, “Sacramento redistricting commission finalizes new City Council map,” *Capitol Public Radio* (Dec. 16, 2021), www.capradio.org/articles/2021/12/16/sacramento-wants-community-feedback-on-proposed-final-redistricting-map-for-city-council-districts/ and Antonio Harvey, “Meadowview Leaders Worry Proposed District Map Will Mute Representation,” *Sacramento Observer* (Dec. 16, 2021), sacobserver.com/2021/12/meadowview-leaders-worry-proposed-district-map-will-mute-representation/.

297 Sacramento Independent Redistricting Commission, “2021 Redistricting Final Report” (Jan. 24, 2022).

298 Jason Ruiz, “Here are Long Beach’s new City Council districts,” *Long Beach Post* (Nov. 19, 2021), lbpost.com/news/long-beach-redistricting-commission-final-map; Jason Ruiz, “Goodbye whale tail? Redistricting Commission suggests major shifts in new City Council maps,” *Long Beach Post* (Oct. 7, 2021), lbpost.com/news/redistricting-commissions-directions-to-consultant-suggest-major-shifts-in-new-city-council-maps; Jason Ruiz, “Cambodian activists urge redistricting commissioners to unite their community,” *Long Beach Post* (Jul. 22, 2021), lbpost.com/news/cambodian-activists-urge-redistricting-commissioners-to-unite-their-community; and Jason Ruiz, “Goal of unifying Cambodians into one voting bloc could be in jeopardy, activists worry,” *Long Beach Post* (Jun. 13, 2021), lbpost.com/news/goal-of-unifying-cambodians-into-one-voting-bloc-could-be-in-jeopardy-activists-worry.

299 Author Interview, Chris Carson with the League of Women Voters of California (Apr. 15, 2022).

300 Author Interview, Cynthia Valencia with the ACLU of Southern California (Apr. 22, 2022).

301 Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022).

insecurity, gentrification, criminalization, lack of access to health care and Islamophobia.”³⁰² The refugee community had been split, diminishing its political voice, under both the existing supervisorial and city council districts, and was asking to be kept whole.³⁰³



El Cajon City Council redistricting hearing.

(PHOTO CREDIT: PANA)



Community drawn map in collaboration with PANA, the Majdal Center, and the Afghan Community Culture Center.

(PHOTO CREDIT: PANA)

302 Rami Ibrahim, “Opinion: By refusing to change its city council districts, El Cajon is leaving immigrants behind,” *San Diego Union Tribune* (Feb. 9, 2022), www.sandiegouniontribune.com/opinion/commentary/story/2022-02-09/el-cajon-redistricting-arab-afghan-community.

303 Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022).

Erikat said that the refugee community’s testimony was not well received in El Cajon. The City Council telegraphed from the start that it was not open to changing its existing lines. At one meeting, Mayor Bill Wells said he was “pretty confident we’re going to end up choosing the map that we already have and I don’t see wasting the public’s money [on demographer services to evaluate community-submitted maps] just to pacify and make people feel better about the process.”³⁰⁴ As the process went on, members of the refugee community who testified in favor of keeping their community whole reported feeling intimidated by supporters of the incumbent councilmembers, some of whom would have been displaced from their districts if that community were unified.³⁰⁵ Ultimately, in spite of significant testimony from the BAMEMSA community, the City Council re-adopted its existing maps without change. As a result, explained Erikat, “the growing refugee and immigrant communities [were effectively split] into no less than three of the four city council districts, effectively diluting the voting power and representation of the city’s most marginalized and underserved communities.”³⁰⁶

In contrast, Erikat reported that the San Diego IRC process was far more welcoming, responsive, and transparent. Unlike El Cajon, the San Diego IRC allowed PANA to give a presentation on the communities it works with at a public hearing. The IRC also permitted the public to testify remotely, which made participation easier for the refugee community. Both the State Commission and San Diego IRC, wrote Erikat, “were committed to growing their understanding of BAMEMSA refugee and immigrant experiences and policy concerns. That understanding and respect for BAMEMSA (COIs) was largely reflected in their final maps.”³⁰⁷ For the county, most of PANA and its partners’ communities of interest were united into a single supervisorial district. But “[e]ven in the few instances where San Diego BAMEMSA COIs were split, both commissions carefully discussed and were cognizant of the impact it would have on BAMEMSA communities of interest (COIs) during the drafting and revision of maps.”³⁰⁸ Reflecting on the two processes, Erikat said “it’s clear the independent commissions allowed for a more engaged process” and “they were really willing to listen to community advocates,” whereas it felt like “in El Cajon protecting incumbents was their number one priority” and they were not open to community of interest testimony “which would have affected their districts.”³⁰⁹

304 El Cajon City Council Meeting (Oct. 26, 2021 at 1:14:35), elcajonca.new.swagit.com/videos/142353. The Council later reversed this decision and had its demographer review draft maps. See Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022).

305 Jeanine Erikat, “Mapping Our Future: Engaging in Redistricting,” Partnership for the Advancement of New Americans (2022).

306 *Ibid.*

307 *Ibid.*

308 *Ibid.*

309 Author interview, Jeanine Erikat with Partnership for the Advancement of New Americans (Apr. 29, 2022).

CASE STUDY

Los Angeles County's IRC was more transparent and more responsive to community concerns than the Los Angeles City Council, which drew its final map behind closed doors.

Organizational stakeholders similarly praised the redistricting process led by Los Angeles County's IRC, the largest county with an IRC in the nation, especially compared with Los Angeles City's council backroom process, discussed in the previous section. The Community Coalition (CoCo) and Catalyst California, for example, co-led the People's Bloc, a multiracial table of 34 organizations dedicated to ensuring the inclusion of historically underrepresented groups in the redistricting processes for Los Angeles County, Los Angeles City, and the Los Angeles Unified School District. In the experience of Aaron Robertson, with Catalyst California, LA County's IRC was more open to "redrawing maps, without political and incumbency-protection interests dominating" than the other two jurisdictions, where elected officials controlled the redistricting process.³¹⁰ It was clear County IRC commissioners had no "political self-interest" in the maps they drew, he said, and as a result they were "more likely to listen to communities about what they think their needs are and to uplift those community needs and priorities. So we saw real shifts in the maps for the county based on community input; but, at the city and school level, decision-makers had their own interests that often took the community perspective out of the process."

The difference between the Los Angeles city and county redistricting process was "night and day for us," agreed Kirk Samuels, formerly the Director of Civic Engagement with Community Coalition, the other co-convenor of the People's Bloc.³¹¹ "The County's independent commission was a lot better for us. We felt like we were being heard," he said. County "commissioners were very engaged in the process and tried to be responsive to community input," whereas the "city was not nearly as responsive as the county" and the final "maps did not reflect how people described their communities."³¹² After the city's advisory commission process concluded, he said, the "final lines that the City Council adopted were drawn behind closed doors" and seemed to value incumbency as the "highest criterion."

Ultimately, while Los Angeles council district lines are mired in controversy, Los Angeles County's maps are generally acknowledged to have done a better job of representing the county's diverse communities than the prior board-adopted maps. The new maps better reflected the county's near majority Latino population. By uniting previously split Latino communities, the number of majority-Latino citizen voting age population (CVAP) districts increased from one to two, almost exactly mirroring the 39% of the county's CVAP that is Latino, and the number of majority-Latino total population districts increased from two to three.³¹³ The new maps also better preserved the

310 Author interview, Aaron Robertson with Catalyst California (May 10, 2022).

311 Author interview, Kirk Samuels with Community Coalition (May 5, 2022).

312 It was later revealed in the leaked Los Angeles city redistricting audio that councilmembers had discussed countering CoCo's advocacy, with labor leader Ron Herrera at one point saying a particular "seat has to be anti-CoCo." Times Staff, "Inside the room," *Los Angeles Times* (Nov. 21, 2022).

313 Los Angeles County Citizens Redistricting Commission, "Final Report" (Rev. Dec. 30, 2021). The law firm's conclusion that "no legally cognizable racially polarized voting in elections for Los Angeles Board of Supervisors" exists, however, was controversial and disputed by many organizational stakeholders.

county's cities, communities of interest, and neighborhoods than the old maps.³¹⁴ The IRC's final report showed that the number of split cities, unincorporated communities, and Los Angeles City neighborhoods were reduced by more than half under the new maps, from 25 splits under the 2011 district maps down to 11 with the 2021 district maps.³¹⁵ The final report also identified 27 communities of interest (COI) in the county based on public hearing testimony, which the IRC attempted to keep whole. Depending on exactly how the boundaries of each COI was mapped — the IRC developed three different models of COI boundaries because community testimony differed — the IRC was able to keep between 63 to 70% of those COIs whole in one district, compared with 52 to 59% kept whole under the prior maps.³¹⁶ Although a lower-ranked criterion, coming after keeping communities and cities whole, the IRC was also able to improve districts' overall compactness.

IRCs that were not politically-independent of the legislative body were less successful.

Most IRCs removed incumbents from the commissioner selection process to protect the IRC's political independence; however, in just a handful of charter cities, elected officials directly appointed IRC commissioners, which undermined public confidence in the process. Under state law, for all IRCs established by a county or general law city, like Santa Barbara County or the City of Martinez, commissioners had to meet strict eligibility criteria that screened out applicants who were related to, had worked for, or had contracts with elected officials. State law also prohibits the direct political appointment of IRC commissioners and requires that commissioners abide by certain during-service and post-service restrictions on their political activity, including a 10-year ban on commissioners running for office in the districts the IRC drew and a four-year ban on commissioners becoming local lobbyists or getting hired by an elected official of the jurisdiction.³¹⁷ The two county IRCs created in state law for Los Angeles and San Diego had similar restrictions and required that commissioners be appointed through a mix of random selection and commissioner self-selection, similar to the selection process for the State Citizens Redistricting Commission.³¹⁸

Charter cities are not bound by state restrictions on IRCs; however, the vast majority of charter city IRCs nonetheless had very similar protections.³¹⁹ For example, in the City of San Diego, commissioners were appointed by a panel of three retired judges.³²⁰ The City of Sacramento had a more typical process involving an open application process and the random selection of commissioners, similar to the State CCRC. Sacramento strictly screened its applicants: city employees, relatives of elected officials and candidates for local office, local campaign consultants, and major campaign donors were all prohibited from serving on the City's IRC. Elected officials could not appoint commissioners; instead, after an open application period, the City's Ethics Commission created a pool of the 25-30 most qualified applicants, based on qualities like impartiality. From that pool, eight commissioners were selected at random, one from each council district, and those eight commissioners would then select the final five to serve on the 13-member Commission.³²¹

314 Los Angeles County's redistricting criteria was very similar, although not identical, to the general redistricting criteria for counties. For example, in Los Angeles preserving the integrity of cities was a co-equal criterion with preserving the integrity of neighborhoods and communities of interest, whereas under the FMA preserving neighborhoods and communities was prioritized over preserving cities. Compare California Elections Code Section 21500 with California Elections Code Section 21534.

315 Los Angeles County Citizens Redistricting Commission, "Final Report" (Rev. Dec. 30, 2021).

316 According to the Los Angeles IRC, "[i]n all three COI models, the 2021 Final Map outperforms the 2011 SD map." *Ibid.*

317 California Elections Code Section 23003.

318 See Chapters 6.3 and 6.5 of Division 21 of the Elections Code.

319 Nicolas Heidorn, "California Local Redistricting Commissions: Landscape, Considerations and Best Practices," California Local Redistricting Project (Updated 2017).

320 San Diego City Charter, Article II, Section 5.

321 Sacramento City Charter, Article XII.

In contrast, the City and County of San Francisco, whose commission predates Proposition 11, is one of the few IRCs to have elected officials directly appoint commissioners; its controversial redistricting in 2022 illustrates the risks and potential conflicts of interest associated with this model. Under the city charter, redistricting is performed by a nine-member Task Force of whom three members are appointed by the Mayor, three by the Board of Supervisors, and three by the City's Elections Commission.³²² The Task Force's work became mired in accusations, by community groups but also by Task Force members, that incumbents or their operatives were directing their appointees to politically gerrymander the lines to the detriment of community representation, especially for Black, LGBTQ+, and Asian communities.³²³ For example, at one point a community member leaked text messages allegedly showing the Chair of the Task Force, a mayoral appointee, confiding that he was being pressured to draw lines that would split a Black community of interest to hurt the re-election chances of a supervisor (a member of the Board's progressive majority) who was a political opponent of the more moderate Mayor London Breed.³²⁴ After missing its deadline, the Task Force approved the final map on a 5-4 vote, with all three mayoral appointees voting yes, all three supervisorial appointees voting no, and the Elections Commission's appointees splitting 2-1.³²⁵ The *San Francisco Examiner* editorialized that, amidst the contentious process, "there's only one thing on which all parties can agree: The task force botched the process and destroyed public trust in its work."³²⁶ In a final report, the Task Force decried its own process and the "unprecedented assaults on its independence by political actors" and called on the City to examine reforms to insulate redistricting "from real or perceived political pressure" in the future.³²⁷

A few IRCs had difficulty recruiting applicants and retaining commissioners.

Most jurisdictions successfully recruited a diverse and large pool of applicants for their IRCs, although some jurisdictions struggled. Relative to their populations, Long Beach and Sacramento had two of the most successful local IRC applicant recruitments in the state. In Long Beach, the City received 400 applicants and assembled a diverse IRC, with more than half of commissioners being women and people of color. The City did extensive outreach to recruit commissioners, including public service announcements in four languages, citywide utility bill inserts, print advertisements in local and ethnic news outlets, notices in housing authority newsletters, billboard ads, presentations at city events, and through "partnerships with community-based organizations and the Long Beach Census Complete Count Committee."³²⁸ Sacramento, which recruited 208 applicants, also did well. Among other outreach efforts, the city created an advisory

322 San Francisco Charter, Article XIII, Section 13.110.

323 Will Jarrett, "Task force members walk out as last redistricting talk turns into chaos," *Mission Local* (Apr. 10, 2022), missionlocal.org/2022/04/commissioners-walk-out-as-final-redistricting-meeting-descends-into-chaos-controversial-map-adopted-regardless/; Will Jarrett, "Redistricting Task Force members decry 'sham,' 'sellout' process," *Mission Local* (Apr. 11, 2022), missionlocal.org/2022/04/sfs-redistricting-task-force-members-say-colleagues-were-bought-and-paid-for-sellouts-and-called-the-process-a-sham/; and Editorial Board, "Editorial: Get it together, San Francisco," *San Francisco Chronicle* (Updated Apr. 9, 2022), www.sfchronicle.com/opinion/editorials/article/Editorial-There-is-no-universe-where-purging-17067298.php.

324 Will Jarrett, Lydia Chávez, and Joe Eskenazi, "Redistricting chair told others he felt mayor's pressure on maps," *Mission Local* (Apr. 13, 2022), missionlocal.org/2022/04/chair-of-redistricting-task-force-told-others-he-felt-mayors-pressure-in-voting-on-maps/.

325 J.D. Morris, "New S.F. supervisor districts get final approval over Tenderloin, SoMa objections," *San Francisco Chronicle* (Upd. May 1, 2022), www.sfchronicle.com/sf/article/New-S-F-supervisor-districts-get-final-approval-17135080.php.

326 Editorial Board, "Time to get a handle on the S.F. redistricting debacle," *San Francisco Examiner* (Apr. 20, 2022; Upd. Jun 8, 2022), www.sfexaminer.com/our_sections/forum/editorial/time-to-get-a-handle-on-the-s-f-redistricting-debacle/article_5d5e2e20-1251-5c33-a029-9b65b571751f.html.

327 2021–2022 San Francisco Redistricting Task Force, "Final Report" (May 23, 2022), sf.gov/sites/default/files/2022-05/2021-2022%20San%20Francisco%20Redistricting%20Task%20Force%20-%20Final%20Report.pdf.

328 Long Beach Independent Redistricting Commission, "Report and Recommendations" (Jan. 2022).

board of diverse stakeholders to help advise with recruiting.³²⁹ The City also successfully partnered with the State Auditor to have the Auditor notify State Commission applicants residing in Sacramento, who were no longer under active consideration for appointment to the State Commission, about their opportunity to serve on Sacramento's IRC. In a survey of how applicants had heard about the Sacramento IRC, 12% of responding applicants stated they received information through the State Auditor, which was the third highest source of applicants overall.³³⁰ The State Auditor would later provide this same service to several other jurisdictions upon request.

Other jurisdictions, particularly those smaller in population and those that did not invest significantly in commissioner recruitment, sometimes struggled. The City of Roseville, for example, had to extend its application period by several months after receiving too few applicants by the original application deadline.³³¹ The City's requirement that residents return paper applications and complete an extensive Form 700 statement of financial interest with that application may have also discouraged some residents. Santa Barbara County, which has a population that is half Latino, also struggled with ensuring diverse representation on its IRC.³³² Because its pool of applicants was not diverse, its first five, randomly-selected commissioners were all White; however, those commissioners selected the remaining six commissioners with a goal of creating a Commission that did reflect the county's demographics.³³³

Once a commission was constituted, some IRCs experienced commissioner turnover prior to adopting a final map, which could be disruptive to the IRC's process. Santa Barbara County, in particular, saw four of its 11 original IRCs commissioners resign before a final map was adopted, including several commissioners of color. Their reasons for stepping down were varied: one commissioner moved out of state; one had a financial conflict; another resigned to make room for a Latino or Republican appointee, two groups that had been underrepresented on the Commission; and the last commissioner said she no longer had the "endurance or strength of belief to continue."³³⁴ Santa Barbara's commission was exceptional in the number of resignations, but several IRCs had one or more commissioners step down, generally because commissioners moved out of the jurisdiction or because the workload ended up being greater than they expected.

One reform to mitigate commissioner departures, used by many IRCs, was to select alternate commissioners as part of the commissioner selection process. The Sacramento IRC and Martinez IRC each had a commissioner leave during the redistricting process; however, each city had preselected alternates who replaced the departed commissioner mostly seamlessly. For example, in Sacramento, the City Charter required that two alternates be selected as part of the formation of the Commission; an alternate was chosen at random to fill the vacancy on the Commission.³³⁵

329 Memo from Catherine McMullen with the Office of the City Clerk to the Sacramento City Council, "Recruitment, Education, and Outreach Plan for the Sacramento Independent Redistricting Commission" (Jan. 28, 2020), sacramento.granicus.com/GeneratedAgendaViewer.php?view_id=22&clip_id=4552.

330 Data obtained from the Sacramento City Clerk and analyzed by California Common Cause (2020).

331 City of Roseville, "Independent Redistricting Commission application period extended until March 5" (Updated Jan. 14, 2021), www.roseville.ca.us/news/what_s_happening_in_roseville/independent_redistricting_commission_application.

332 Jade Martinez-Pogue, "First 5 Members Selected for Santa Barbara County's Independent Redistricting Commission," *Noozhawk* (Oct. 15, 2020), www.noozhawk.com/district_attorney_selects_the_first_five_members_of_santa_barbaras_independ/.

333 Mike Hodgson, "Santa Barbara County Independent Redistricting Commission elects six final members," *Santa Maria Times* (Aug. 19, 2021), santamariatimes.com/news/local/govt-and-politics/santa-barbara-county-independent-redistricting-commission-elects-six-final-members/article_227e6709-3371-535d-ae31-Oe3ee3fe8887.html.

334 Kasey Bubnash, "Fourth commissioner resigns from Santa Barbara County Redistricting Commission," *Santa Maria Sun* (Apr. 21, 2021), www.santamariasun.com/news/20459/fourth-commissioner-resigns-from-santa-barbara-county-redistricting-commission/

335 Sacramento City Charter Section 174(l).

Several organizational stakeholders, as well as several IRCs in their “lessons learned” final reports, noted that the time commitment of serving an IRC could be daunting for uncompensated volunteers.³³⁶ For example, the Los Angeles County IRC recommended that the county better “inform Commissioner applicants about the time commitment and consider some form of compensation given the demands on their time.”³³⁷ San Diego County’s IRC also recommended future commissioners receive a stipend “due to the workload entailed ... and to encourage participation by citizens who may otherwise be financially unable to volunteer.”³³⁸ Commissioner stipends were also broadly supported by many organizational stakeholders, who thought they would help with retention and also with recruiting diverse applicants. Commissioners “should have been compensated,” agreed Jeanine Erikat with PANA.³³⁹ “That way non-retired people could more easily participate in the process. The lack of a stipend eliminated a lot of working people of color from being able to apply” as well, she said.

In some jurisdictions, IRC staffing became an issue.

In some jurisdictions, where the legislative body hired or assigned staff for the IRC as opposed to the IRC hiring its own consultants, some stakeholders feared the legislative body was trying to bias the IRC’s work through staff. In Santa Barbara County, for example, the county hired a redistricting consultant in advance of the IRC being formed to expedite the process. However, some community groups, including the local chapter of the League of Women Voters, objected to the county choosing the consultant instead of the IRC, arguing that this consultant in particular had a history of being politically biased and drawing incumbency protection maps.³⁴⁰ The IRC voted to keep the consultant, but asked for a list of alternative consultants if issues emerged with the preselected consultant.

Assigning county or city staff to assist an IRC also sometimes created the risk or appearance of bias. For example, in Long Beach, towards the start of the process the City Attorney’s office informed the IRC “that current City Council districts may be used as a starting point by the [IRC] in drawing district boundaries. In fact, it is the recommendation of this office that the IRC begin with those current districts.”³⁴¹ The City Attorney’s memo was accompanied by a supportive legal memo by a law firm the City had hired to assist the IRC with redistricting; however, the Commission had not requested this legal opinion and, in subsequent media requests, the City Attorney’s office refused to disclose who had requested the analysis.³⁴² California Common Cause and Equity for Cambodians, the two nonprofit organizations that had drafted the charter amendment creating Long Beach’s IRC, objected strenuously to the City Attorney’s analysis, arguing that it was contrary to both the text and spirit of the measure creating the IRC, and posed “larger concerns about the City Attorney’s office providing legal guidance to a commission that was formed to lead a redistricting

336 See, e.g., Letter from Julia Marks with Asian Americans Advancing Justice - Asian Law Caucus, Alesandra Lozano with California Common Cause, and Alison Goh with the League of Women Voters of San Francisco, to the San Francisco Redistricting Task Force, “RE: Recommendations for inclusion in Redistricting Task Force final report” (May 6, 2022), sf.gov/sites/default/files/2022-05/2021-2022%20San%20Francisco%20Redistricting%20Task%20Force%20-%20Final%20Report.pdf.

337 Los Angeles County Citizens Redistricting Commission, “Final Report” (Updated Dec. 30, 2021).

338 San Diego County Independent Redistricting Commission, “Lessons Learned Summary” (Jan. 12, 2022), www.sandiegocounty.gov/content/dam/sdc/redistricting/docs/2020%20Lessons%20Learned%20Summary%20-%20COB.pdf.

339 Author interview, Jeanine Erikat with Partnership for the Advancement of New Americans (Apr. 29, 2022).

340 Kasey Bubnash, “Redistricting commission votes to keep controversial demographer,” *Santa Maria Sun* (Jan. 27, 2021), www.santamariasun.com/news/20265/redistricting-commission-votes-to-keep-controversial-demographer/.

341 Memo from Amy R. Webber and Taylor M. Anderson with the City Attorney’s Office to the Long Beach Independent Redistricting Commission, “Use of Current Council Districts in the Redistricting Process” (Apr. 15, 2021), longbeach.legistar.com/View.ashx?M=F&ID=9317716&GUID=CF077F1D-4834-4C6B-974F-3F404FC1A67B.

342 Stephen Downing, “Another Stonewall by City Attorney Parkin,” *Beachcomber* (Jul. 21, 2021), beachcomber.news/content/another-stonewall-city-attorney-parkin.

process independent of political and incumbent interests.”³⁴³ The IRC rejected the City Attorney’s recommendation and would later write, in its final report, that to “enhance the independence of the process” and avoid any “conflict of interest,” future commissions should be able to select their own demographer and “their own legal counsel ... not working within the City Government.”³⁴⁴

Advisory commissions were also widely used this cycle, but subject to far less state regulation.

Instead of IRCs, many jurisdictions opted to create advisory redistricting commissions this cycle. According to a Common Cause survey of county redistricting this cycle, 24 out of California’s 58 counties, or 41% of all counties, established an ARC, including large counties like Fresno, Riverside, and Santa Clara. ARCs were used in several cities as well, including major cities like Los Angeles, San Jose, San Bernardino, and Stockton.

Unlike IRCs, state law provides few restrictions on how advisory commissions are created. For counties and general law cities, state law only prohibits the appointment of “an elected official of the local jurisdiction, or a family member, staff member, or paid campaign staff of an elected official” to the ARC.³⁴⁵ The legislative body in these jurisdictions can choose how commissioners are selected. For charter cities, state law imposes no limitations on the qualifications or selection process of ARC commissioners. In practice, for the vast majority of jurisdictions with ARCs in the 2020 cycle, the elected officials of the jurisdiction directly appointed the commissioners.

Organizational stakeholders’ views on the usefulness of advisory commissions this cycle were deeply polarized. About 40% of respondents felt ARCs had led to a somewhat or significantly better process than when a legislative body redistricted without recommendations; however, about 30% felt it led to a significantly or somewhat worse process than when the legislative body drew lines on its own, and about another 30% thought the outcomes were equivalent.³⁴⁶ Stakeholders’ perspective on ARCs varied considerably depending on factors like the transparency of the local ARC’s process, whether ARC commissioners were politically independent of the legislative body, and whether the legislative body ultimately adopted the ARC’s recommendations.

Advisory commissions provided more opportunities for public participation and deliberation, but frequently proposed draft maps benefitting incumbents over communities.

One significant benefit of ARCs, as with IRCs, is that they typically held far more public hearings and generated far more public comment than when a legislative body redistricts on its own. Angélica Salceda, with the ACLU, observed that, on the positive side, advisory commissions provided “more opportunities for the public to weigh in and provide public comment. In places like Fresno, Tulare, and Stanislaus with advisory commissions, the redistricting process started earlier” which also expanded opportunities for participation.³⁴⁷ In the City of Los Angeles, for example, the Advisory Commission reported that “more than 6,300 people participated in public hearings and special meetings” and the Commission “received more than 8,600 pieces of written feedback from the public,” including over 380 draft maps.³⁴⁸ In many jurisdictions,

343 Jason Ruiz, “Goal of unifying Cambodians into one voting bloc could be in jeopardy, activists worry,” *Long Beach Post* (Jun. 13, 2021), lbpost.com/news/goal-of-unifying-cambodians-into-one-voting-bloc-could-be-in-jeopardy-activists-worry and Letter from Dan Vicuna with California Common Cause to the Long Beach Independent Redistricting Commission, “April 15, 2021 Memo...” (June 16, 2021), longbeach.legistar.com/View.ashx?M=F&ID=9545694&GUID=3E47C25F-5452-489A-BD1F-17EE76D116B5.

344 Long Beach Independent Redistricting Commission, “Report and Recommendations” (Jan. 6, 2022).

345 California Elections Code Section 23002.

346 Organizational Stakeholder Local Redistricting Survey (2022).

347 Organizational Stakeholder Local Redistricting Survey (2022), comment by Angélica Salceda with the ACLU of Northern California.

348 Los Angeles City Council Redistricting Commission, “Report and Recommendations of the Los Angeles City Council Redistricting Commission” (Oct. 28, 2021), redistricting2021.lacity.org/LACCRC/documents/211028/Final-Report-Draft-10.26.pdf.

it would have been very difficult for a legislative body, given all its other responsibilities and multi-purpose meetings, to have held as many meetings or synthesized the volume of public comment as many advisory commissions did.

However, in many cities and counties, it was not clear that the added community feedback had any impact on the final composition of the maps where that feedback clashed with incumbent self-interest. Because most ARC commissioners were directly appointed, in many jurisdictions the legislative body would simply “put proxies on the advisory commission who will act in the incumbents’ interest, rather than the public interest,” said Cynthia Valencia, Senior Policy Advocate and Organizer with the ACLU of Southern California.³⁴⁹ Incumbents could then “use the advisory commission’s bad draft maps as justification” for their adoption, she said, claiming they were merely following the commission’s recommendation rather than acting in their own self-interest. Jonathan Mehta Stein, with Common Cause, observed that from his organization’s monitoring of the local redistricting cycle, ARCs frequently served to give incumbents “political cover” to adopt self-serving maps: “they [were] a way to launder gerrymandering.”³⁵⁰

The expectation that an ARC commissioner should serve as the agent of their appointing elected official was on full display in the City of Los Angeles’s redistricting. From the start, commissioners were hardly politically independent, reported the *Los Angeles Times*, but instead included a who’s who of “former elected officials and longtime political aides, who are appointed by the city’s elected leaders and serve at their pleasure.”³⁵¹ Logs of commissioners’ ex parte communications, a rare concession towards transparency, showed that commissioners were in near constant communication with the Mayor, councilmembers, and their staff.³⁵² Incumbents who felt the Commission’s recommended maps hurt their prospects fumed at their appointees in private: in the leaked conversation between labor leader Herrera and councilmembers Martinez, de León, and Cedillo, the incumbents complained that the Commission had “gone rogue” and become a “Frankenstein monster” because some commissioners were not “tak[ing] direction” from their appointing members.³⁵³ In an attempt to avoid unfavorable maps, midway through the process several incumbents even replaced — without public explanation — wayward or insufficiently zealous appointees.³⁵⁴

While defending the map the Los Angeles ARC ultimately recommended, Commission Chair Fred Ali would later write that “ex parte communication opened the door to political interference, including the sudden appearance of maps of dubious origin and the eleventh-hour drop and the swapping out of commissioners by council members in a bid to reshape the map in their favor.”³⁵⁵ He told the Council that “this commission over the last year confirmed that the quasi-independent nature of the advisory commission simply does

349 Author Interview, Cynthia Valencia with the ACLU of Southern California (Apr. 22, 2022).

350 Author interview, Jonathan Mehta Stein with California Common Cause (Apr. 13, 2022).

351 Editorial Board, “In Los Angeles, political meddling poisons redistricting,” *Los Angeles Times* (Oct. 25, 2021).

352 Los Angeles City Council Redistricting Commission, “LACCRC Ex Parte Communications Log” (Dec. 2, 2021), ens.lacity.org/clamminutesrc/clamminutesrc3197156901_12022021.pdf.

353 *Times* Staff, “Inside the room,” *Los Angeles Times* (Nov. 21, 2022).

354 For example, only two weeks before the conclusion of a nearly year-long advisory commission process, Councilmember Nithya Raman, whose district was set to be radically altered, suddenly replaced her prior appointee, a community activist, with a current school board member and prior city councilmember described as a “consummate political fighter” by the *Los Angeles Times*. Editorial Board, “In Los Angeles, political meddling poisons redistricting,” *Los Angeles Times* (Oct. 25, 2021). In all, six commissioners were replaced in the last two months of the Commission’s process. See Los Angeles City Clerk, “2020 Redistricting Commission / Appointments (Council File: 20-0668-S1),” cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=20-0668-S1 (accessed Oct. 2022).

355 Fred Ali, “Op-Ed: By all means, make redistricting in Los Angeles truly independent,” *Los Angeles Times* (Nov. 1, 2021), www.latimes.com/opinion/story/2021-11-01/los-angeles-redistricting-commission-city-council.

not work,” before calling on an independent commission “to assume responsibility for redistricting for the good of our city.”³⁵⁶

Advisory commissions that proposed maps that departed too radically from the status quo frequently had their recommendations drastically modified or outright ignored.

Organizational stakeholders reported that, where ARCs acted independently and recommended maps regardless of incumbents’ preferences, their recommendations risked being discarded or significantly revised. In the City of Los Angeles, after the ARC went “rogue,” Council President Martinez appointed an ad hoc committee of councilmembers, which she chaired, to rework the ARC’s recommendation. The ad hoc committee quickly reversed many of the ARC’s more significant proposed departures, particularly in the San Fernando Valley; the City Council later unanimously adopted its ad hoc committee’s proposal instead of the ARC’s original recommended map.³⁵⁷ “For community members showing up month after month to the advisory commission meetings, it was very tough for us” to see the City Council undermine that process, explained Kirk Samuels, with CoCo.³⁵⁸ “Good commissions” that try to put community interests first, explained Julia Gomez with ACLU, “can just have their proposed maps disregarded, so all that community testimony can get ignored and not even be before the deciding body.”³⁵⁹

San Mateo County is a clear example of this. The county had a very robust advisory commission process, only to see this work ultimately disregarded. The 15-member body, whose members were selected by the local chapter of the League of Women Voters, met 10 times and received over 300 community comments, including more than 20 proposed draft maps.³⁶⁰ From these, the Commission recommended two maps to the Board of Supervisors, one created by a coalition of community groups and nonprofits, and another created by the Commission based on feedback received from the public. Both maps, which had broad community support, proposed substantial changes to the existing lines. The coalition’s map, in particular, had strong support from communities of color, and would have united Asian and Latino communities and communities of interest with shared socioeconomic and environmental concerns.³⁶¹ However, the Board of Supervisors rejected both recommendations, and instead voted unanimously to adopt a minimal-changes map. Community members who had spent months engaged in the process felt betrayed. “You are disregarding the public input that you put money and time into asking for” only to go “with a map that had zero public support in any of the public comments,” Julie Shanson with Belle Haven Action, a Menlo Park community group, told the Board.³⁶²

Advisory commissions that are not directly appointed by incumbents may help elevate community-oriented maps.

Although organizational stakeholders near-unanimously agreed that an advisory commission process could be and often was abused, some stakeholders felt that an ARC could still be useful for engaging and elevating

356 NBC Los Angeles, “Map With New LA Districts Advanced From Ad Hoc Redistricting Committee to Full City Council” (Nov. 6, 2021), www.nbclausangeles.com/news/local/map-with-new-la-districts-advanced-from-ad-hoc-redistricting-committee-to-full-city-council/2750347/.

357 David Zahniser, “L.A. approves its redistricting map, setting political boundaries for the next decade,” *Los Angeles Times* (Dec. 7, 2021), www.latimes.com/california/story/2021-12-07/los-angeles-city-council-redistricting-vote.

358 Author interview, Kirk Samuels with Community Coalition (May 5, 2022).

359 Author interview, Julia Gomez with ACLU of Southern California (Apr. 22, 2022).

360 County of San Mateo, “Advisory Commission,” smcdistrictlines.org/advisory-commission/ (accessed Oct. 2022) and Sierra Lopez, “San Mateo County considers new district map,” *San Mateo Daily Journal* (Nov. 10, 2021), www.smdailyjournal.com/news/local/san-mateo-county-considers-new-district-map/article_a6534410-41e1-11ec-a734-87a6d7fbc7f1.html.

361 Author interview, Julia Marks with Asian Law Caucus (Apr. 15, 2022). See also Sierra Lopez, “San Mateo County considers new district map,” *San Mateo Daily Journal* (Nov. 10, 2021).

362 Kate Bradshaw, “County supervisors stick to status quo for next decade’s election boundary maps,” *The Almanac* (Updated Dec. 27, 2021) www.almanacnews.com/news/2021/12/24/county-supervisors-stick-to-status-quo-for-next-decades-election-boundary-maps.

the needs of underrepresented communities, if the ARC was politically independent of the legislative body. Petra Silton, the Senior Director of Programs at Thrive Alliance, which supported one of the recommended maps in San Mateo, said the county's advisory commission process "was still helpful, although its recommended maps were not adopted" by the County.³⁶³ The Commission's lengthy and engaged process, she said, "helped spark a big conversation in our county about what the lines should look like that we wouldn't otherwise have had." Moreover, the Commission's political independence meant that it put forward community-centric maps that, "if the Board had just done redistricting on its own, they may not have even considered." Aaron Robertson, with Catalyst California, similarly observed that "the hidden value of the advisory commission is it creates vehicles to engage and educate stakeholders," but acknowledged that was a "bleak upside" in the short term if the testimony was ignored.³⁶⁴

From stakeholders' observations, as with IRCs, independently-appointed ARCs were more likely to promote maps that better represented diverse communities. Sometimes these maps were disregarded, as in San Mateo County, but sometimes these maps helped put pressure on the legislative body to adopt better maps. Tulare County, for example, had an 11-member advisory commission, with five members directly appointed by incumbent supervisors but six — a majority — appointed indirectly by random draw.³⁶⁵ A big issue in the county was whether Latino communities, which community and voting rights organizations alleged had been gerrymandered against in the past, would be adequately represented.³⁶⁶ At the time of redistricting, there was only one Latino supervisor on the five-member board of supervisors and only two Latinos had ever been elected to the board in county history, despite Latinos constituting more than 65% of the county's population.³⁶⁷ After holding 14 hearings and receiving public comment from more than 250 residents, a divided ARC recommended four maps, three of which united Latino communities to create three districts where the Latino citizen voting age population (CVAP) exceeded 55%, a key ask of community groups who argued creating these districts were required under the federal Voting Rights Act.³⁶⁸

"The randomly selected commissioners ended up being the heroes pushing for a fairer map," said Lori Pesante, with the Dolores Huerta Foundation, which helped lead a coalition backing one of the recommended maps.³⁶⁹ The Board ultimately adopted a map that blended elements of the four recommended maps, including uniting Latino communities into three districts with more than a 55% Latino CVAP.³⁷⁰ "That was a recommendation of the Advisory Commission and the Board kind of had to keep it at that point, because it was on the record," explained Pesante, which she said "saved" the Board from a civil rights lawsuit.³⁷¹

363 Author interview, Petra Silton with Thrive Alliance (May 11, 2022).

364 Author interview, Aaron Robertson with Catalyst California (May 10, 2022).

365 Tulare County 2021 Advisory Commission on Supervisorial Redistricting, "Final Report" (Oct. 21, 2021), tularecounty.ca.gov/redistricting/commission/2021-commission-final-report/.

366 Matthew Sarr, "Concern With Districts: Lawsuit pending," *Porterville Recorder* (Apr. 6, 2018), www.recorderonline.com/news/concern-with-districts-lawsuit-pending/article_37bd246e-395a-11e8-bde1-bf2f4bb25799.html.

367 A third Latino had been appointed to the board but did not win re-election. See Juan Esparza Loera, "Tulare County supervisors back 3 Latino-majority districts. Is that enough?," *Fresno Bee* (Nov. 12, 2021), www.fresnobee.com/vida-en-el-valle/noticias/california-es/fresno/article255757586.html.

368 Jame Ward, *et al.*, "Redistricting maps could pit Shuklian against Vander Poel, Wells Map will lead to Tulare County paying millions," *Visalia Times Delta* (Oct. 28, 2021), www.visaliatimesdelta.com/story/news/2021/10/28/redistricting-maps-could-pit-shuklian-against-vander-poel-lawsuit-federal-voting-rights-huerta-found/8553623002/.

369 Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

370 Dave Adalian, "Tulare County political mapmaking reveals divided community," *Valley Voice* (Nov. 19, 2021), www.ourvalleyvoice.com/2021/11/19/tulare-county-political-mapmaking-reveals-divided-community/ and Ben Irwin, "Supervisors champion new district map ratification," *Sun Gazette* (Dec. 1, 2021), thesungazette.com/article/business/2021/12/01/supes-champion-new-district-map-ratification/.

371 Author interview, Lori Pesante with Dolores Huerta Foundation (May 4, 2022).

Recommendations

→ **Recommendation 5.1. Require independent redistricting commissions for larger jurisdictions and prohibit the direct appointment of commissioners by elected officials.**

Legislatively-controlled redistricting is an inherent conflict of interest for incumbents. One of the most important lessons of the 2020 local redistricting cycle is that when incumbent self-interest and community representation collide, incumbent-oriented lines generally prevail. The FMA criteria should be amended to prevent the worst of these abuses. However, even if the FMA criteria are clarified and strengthened, many incumbents will still resist adopting more community-reflective maps that could harm their political careers, undermining the goal of fair representation that districts are supposed to provide.

State law should require that larger jurisdictions, including charter cities, adopt politically-independent IRCs. Local IRCs significantly outperformed legislative bodies this cycle in terms of encouraging public participation, conducting a transparent process, and adopting more representative districts that kept communities whole and that were not designed to entrench incumbents or advantage political parties. While most jurisdictions would benefit from adopting an IRC, having an IRC is especially important for larger jurisdictions, whose redistricting process is generally more complicated and more politically contentious, and which also have greater resources to staff a commission and a sufficient population base from which to recruit a diverse and qualified applicant pool without great difficulty.

State law should also be amended to prohibit elected officials in charter cities from directly appointing IRC commissioners. As San Francisco and numerous directly-appointed advisory commissions demonstrated this cycle, directly appointed commissioners often act as proxies for their appointing officials, undermining the benefits of IRCs and harming public trust in the redistricting process. Charter cities should also be required to adopt certain basic IRC commissioner qualification standards, similar to those already in place for all other local jurisdictions that establish IRCs, including general law cities. To avoid the appearance of bias, IRCs should also be responsible for selecting any redistricting consultant or legal counsel hired to assist the Commission.

→ **Recommendation 5.2. Jurisdictions with IRCs should make careful plans, and invest the necessary resources, to recruit a large and diverse applicant pool.**

To ensure sufficient quality and diversity in the candidate applicant pool, IRC jurisdictions should adopt and devote resources to an IRC applicant recruitment plan that includes both general strategies for reaching a broad number of eligible residents — like utility bill inserts — and targeted strategies to reach underrepresented communities — like reaching out to or partnering with community based organizations that work in those communities. The California Local Redistricting Project, for example, has a detailed list of best practices jurisdictions can take in recruitment.³⁷² Jurisdictions should also evaluate and eliminate unnecessary procedural steps that act as barriers to people completing their applications. For example, applicants should not be required to submit paper applications or to complete the lengthy Form 700 conflict of interest disclosure as part of their applications, two policies that likely reduced the number of applicants to some local IRCs this cycle.

372 California Local Redistricting Project, “Best Practices for Commissioner Recruiting” (May 2020), assets.ctfassets.net/nek-n-v9Owybs/2YtVax9qDBsmCWWWWZ9F3kZ/267c05526a87aa408fa47ab18daf952b/Brief_-_Commissioner_Recruiting_-_Final.pdf.

→ **Recommendation 5.3. Require the State Auditor to inform applicants that are not selected for the State Redistricting Commission of opportunities to serve on a local redistricting commission.**

The State Auditor played an important role this cycle in providing information about local IRC opportunities to State Redistricting Commission applicants. Most jurisdictions with IRCs had a small or no budget for commissioner recruitment; by contrast, the State Auditor had a \$5.2 million budget to administer the state application process, including several million dollars for public outreach.³⁷³ The Auditor's sharing of local IRC opportunities to unsuccessful state applicants enabled local jurisdictions to benefit from the State's higher-profile advertising and outreach efforts to reach a targeted audience of dozens to hundreds of people in their jurisdiction — out of the over 20,000 Californians statewide who submitted initial applications to the state CCRC³⁷⁴ — with a strong interest in independent redistricting. In some jurisdictions, like Sacramento, the Auditor's referral was a significant driver of local commission applicants.

The State Auditor should repeat this valuable information-sharing role in the future redistricting cycles. To lock-in this best practice for future cycles, state law should be amended to require that the State Auditor forward opportunities to serve on local IRCs to State Commission applicants who do not advance in the state process, based on the city/county where the applicant resides. Codifying this process now would also better enable the State Auditor to plan for and coordinate this process with the growing number of local governments using IRCs.

→ **Recommendation 5.4. Require stipends for independent redistricting commission commissioners.**

To assist in recruiting a diverse pool of applicants, and to help with commissioner retention, IRC commissioners should receive a per-meeting stipend for their service, similar to the commissioners on the State Commission, who received \$300 per day of service.³⁷⁵ A stipend would make it less likely that people would decline to serve on an IRC for financial reasons, including young people, low-income people, and working parents.

→ **Recommendation 5.5. Prohibit the political appointment of ARC commissioners.**

In jurisdictions that do not have independent commissions, advisory commissions can expand the amount and quality of public input in the local redistricting process; however, without guardrails to ensure commissioners' political independence, ARCs can be misused to give incumbents political cover for adopting self-serving incumbency protection plans. Bad ARCs can have the counterintuitive effect of deepening public cynicism around democracy and government, if they are revealed to simply be an elaborate front for gerrymandering. State law should be amended to require greater political independence of commissioners on advisory redistricting commissions. At minimum, elected officials should not be able to directly appoint commissioners.

Politically-insulated ARCs, as with politically-insulated IRCs, are more likely to recommend maps that reflect jurisdictions' diverse communities and are less likely to be beholden to incumbents. While ARC recommendations are always at-risk of being ignored, community groups can organize around the recommendation to place political pressure on the legislative body to be responsive to community concerns, as happened in Tulare County. A case study of the 2010 redistricting cycle by the California

373 AB 74 (Ting), Chapter 23, Statutes of 2019, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB74 (Budget Act).

374 State Auditor, "Applicant Statistics" (May 28, 2020 archived version), web.archive.org/web/20200528110918/applications.shape-californiasfuture.auditor.ca.gov/stats.html.

375 California Government Code Section 8253.5.

Local Redistricting Project found that the recommendations of local ARCs were often adopted, including politically-insulated ARCs. The report concluded that “advisory commissions with strong protections to ensure commissioner impartiality therefore seem to be a strong second-best option for meaningful redistricting reform, where independent commissions may not be politically or legally possible.”³⁷⁶

It is of course likely that, if incumbents could not control the appointments process, fewer local jurisdictions would establish advisory commissions. However, a sham commission process, where commissioners draw lines principally to address incumbents’ over communities’ needs, is often worse than having no commission at all. Such commissions hurt public trust, waste the time of residents who participated in the process, and obscure who is responsible for adopting a map, undermining political accountability.

376 Ian O’Grady and Nicolas Heidorn, “The Adoption Rate of Advisory Commission Recommendations,” California Local Redistricting Project (2018).

IV. CONCLUSION

Fair representation is important at all levels of government, especially local. Local governments' decisions on issues including land use and affordable housing, policing, supportive services, and education policy have an outsized impact on the lives and quality of life of their residents. How election lines are drawn and redrawn can have a tremendous impact on which communities are listened to and have their needs reflected in these policy discussions, and which communities are ignored.

The FAIR MAPS Act was a major step towards a fairer and more inclusive local redistricting process in California, and by extension a fairer and more inclusive local democracy. The 2020 city and county redistricting cycle was the most transparent and most participatory in state history and, because of stronger criteria and especially the widespread adoption of independent redistricting commissions, many jurisdictions adopted maps that will better reflect and empower the diverse communities that reside there for the decade to come.

However, as this review of the 2020 cycle demonstrates, these gains were in many cases uneven. Some jurisdictions embraced their public outreach obligations and conducted a transparent process in keeping with both the letter and spirit of the FMA; others did not. In many jurisdictions, the desire for fuller and more inclusive community representation was subordinated to protecting incumbents. Moreover, the FMA's process protections applied only to cities and counties, and not other jurisdictions, like school districts and special districts.

Learning from this past cycle and looking to 2030, the Legislature should pass laws to strengthen and expand the FMA in alignment with the recommendations identified here, including extending the FMA's provisions to school districts and special districts, expressly prohibiting incumbency protection gerrymandering, and requiring independent redistricting commissions in larger jurisdictions. These reforms would expand California's role as the national leader in ensuring redistricting that centers community voices, and would bring us closer than ever before to the vibrant, equitable, and multiracial democracy our state deserves.